

Senate Daily Reader

Tuesday, March 01, 2005

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State of South Dakota

EIGHTIETH
LEGISLATIVE ASSEMBLY, 2005

886L0071

SENATE GOVERNMENT OPERATIONS AND AUDIT
COMMITTEE ENGROSSED NO. **HB 1004** -
02/25/2005

Introduced by: Representatives Klaudt and Lange and Senators Koskan, Duniphan, and Moore at the request of the Committee on Government Operations & Audit

1 FOR AN ACT ENTITLED, An Act to require that certain financial information concerning fund
2 balances be reported to the Legislature.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 4-4 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 The commissioner of the Bureau of Finance and Management shall report, upon request, a
7 condition statement for any fund that receives funding from the federal government. The
8 commissioner of the Bureau of Finance and Management shall provide condition statements
9 when requested by a legislative committee or a legislative committee chair.

10 Section 2. That chapter 4-7 be amended by adding thereto a NEW SECTION to read as
11 follows:

12 For the purposes of this chapter, a condition statement is a document that identifies a fund's
13 beginning balance, receipts, disbursements, and ending balance for each of the last two
14 concluded fiscal years and that identifies a fund's beginning balance, projected receipts,



1 projected disbursements, and ending balance for the current fiscal year and the next fiscal year.
2 The fund's ending balance, for the current fiscal year and the next fiscal year, shall represent the
3 ending cash balance of the fund reduced by any money that is reappropriated to the next fiscal
4 year along with any other commitments to be funded from the ending cash balance. Condition
5 statement forms, prescribed by the Bureau of Finance and Management, shall be uniform.

State of South Dakota

EIGHTIETH LEGISLATIVE ASSEMBLY, 2005

400L0275

HOUSE ENGROSSED NO. **HB 1024** - 02/16/2005

Introduced by: The Committee on Appropriations at the request of the Board of Regents

1 FOR AN ACT ENTITLED, An Act to make an appropriation to the Board of Regents to cover
2 certain cost increases affecting construction of the Lee Medicine and Science Hall
3 renovation or replacement project at the University of South Dakota and to declare an
4 emergency.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

6 Section 1. There is hereby appropriated one million eight hundred thousand dollars
7 (\$1,800,000) from the general fund to the Board of Regents to supplement the thirty-two million
8 dollars provided in subdivision (8) of section 3 of chapter 95 of the 2001 Session Laws for the
9 renovation or replacement of the Lee Medicine and Science Hall at the University of South
10 Dakota in Vermillion, South Dakota.

11 Section 2. Whereas, this Act is necessary for the support of the state government and its
12 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in
13 full force and effect from and after its passage and approval.

14 Section 3. Notwithstanding any other provision of state law, no money appropriated from
15 the state general fund, nor appropriated for statewide maintenance and repair, may be used to
16 finance the maintenance and repair of the facility authorized in this Act.



State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

339L0339

SENATE EDUCATION COMMITTEE ENGROSSED NO. **HB 1067** - 02/24/2005

Introduced by: Representatives Rhoden and Hargens and Senators Bogue and Moore

1 FOR AN ACT ENTITLED, An Act to revise the property tax levies for the general fund and the
2 special education tax levy of a school district.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 10-12-42 be amended to read as follows:

5 10-12-42. For taxes payable in ~~2005~~ 2006 and each year thereafter, the levy for the general
6 fund of a school district shall be as follows:

7 (1) The maximum tax levy shall be ~~eleven~~ ten dollars and ~~forty-five~~ ninety cents per
8 thousand dollars of taxable valuation subject to the limitations on agricultural
9 property as provided in subdivision (2) of this section, owner-occupied property as
10 provided for in subdivision (3) of this section, and nonagricultural acreage property
11 as provided for in subdivision (4) of this section;

12 (2) The maximum tax levy on agricultural property for such school district shall be three
13 dollars and ~~thirty-two~~ sixteen cents per thousand dollars of taxable valuation. If the
14 district's levies are less than the maximum levies as stated in this section, the levies
15 shall maintain the same proportion to each other as represented in the mathematical



1 relationship at the maximum levies;

2 (3) The maximum tax levy for an owner-occupied single-family dwelling as defined in
3 § 10-13-40, for such school district may not exceed five dollars and ~~thirty-four~~ nine
4 cents per thousand dollars of taxable valuation. If the district's levies are less than the
5 maximum levies as stated in this section, the levies shall maintain the same
6 proportion to each other as represented in the mathematical relationship at the
7 maximum levies; and

8 (4) The maximum tax levy on nonagricultural acreage property as defined in § 10-6-
9 33.14, for such school district shall be four dollars and ~~thirty-two~~ sixteen cents per
10 thousand dollars of taxable valuation. If the district's levies are less than the
11 maximum levies as stated in this section, the levies shall maintain the same
12 proportion to each other as represented in the mathematical relationship at the
13 maximum levies.

14 All levies in this section shall be imposed on valuations where the median level of
15 assessment represents eighty-five percent of market value as determined by the Department of
16 Revenue and Regulation. These valuations shall be used for all school funding purposes. If the
17 district has imposed an excess levy pursuant to § 10-12-43, the levies shall maintain the same
18 proportion to each other as represented in the mathematical relationship at the maximum levies
19 in this section. The school district may elect to tax at less than the maximum amounts set forth
20 in this section.

21 Section 2. That § 13-37-35.1 be amended to read as follows:

22 13-37-35.1. Terms used in chapter 13-37 mean:

23 (1) "Level one disability," a mild disability;

24 (2) "Level two disability," a mental retardation or emotional disorder;

- 1 (3) "Level three disability," hearing impairment, deafness, visual impairment,
2 deaf-blindness, orthopedic impairment, or traumatic brain injury;
- 3 (4) "Level four disability," autism;
- 4 (5) "Level five disability," multiple disabilities;
- 5 (5A) "Level six disability," prolonged assistance;
- 6 (6) "Index factor," is the annual percentage change in the consumer price index for urban
7 wage earners and clerical workers as computed by the Bureau of Labor Statistics of
8 the United States Department of Labor for the year before the year immediately
9 preceding the year of adjustment or three percent, whichever is less;
- 10 (7) "Local effort," is the amount of taxes payable each year, using a levy for the special
11 education fund of a school district of one dollar and twenty-five cents per thousand
12 dollars of taxable valuation;
- 13 (8) "Allocation for a student with a level one disability," for the school fiscal year
14 beginning July 1, 2004, is \$3,533.13. For each school year thereafter, the allocation
15 for a student with a level one disability shall be the previous fiscal year's allocation
16 for such child increased by the lesser of the index factor or three percent;
- 17 (9) "Allocation for a student with a level two disability," for the school fiscal year
18 beginning July 1, 2004, is \$8,277.21. For each school year thereafter, the allocation
19 for a student with a level two disability shall be the previous fiscal year's allocation
20 for such child increased by the lesser of the index factor or three percent;
- 21 (10) "Allocation for a student with a level three disability," for the school fiscal year
22 beginning July 1, 2004, is \$12,580.73. For each school year thereafter, the allocation
23 for a student with a level three disability shall be the previous fiscal year's allocation
24 for such child increased by the lesser of the index factor or three percent;

(11) "Allocation for a student with a level four disability," for the school fiscal year beginning July 1, 2004, is \$12,001.80. For each school year thereafter, the allocation for a student with a level four disability shall be the previous fiscal year's allocation for such child increased by the lesser of the index factor or three percent;

(12) "Allocation for a student with a level five disability," for the school fiscal year beginning July 1, 2004, is \$15,882.21. For each school year thereafter, the allocation for a student with a level five disability shall be the previous fiscal year's allocation for such child increased by the lesser of the index factor or three percent;

(12A) "Allocation for a student with a level six disability," for the school fiscal year beginning July 2004, is \$8,122.23. For each school year thereafter, the allocation for a student with a level six disability shall be the previous fiscal year's allocation for such child increased by the lesser of the index factor or three percent;

(13) "Child count," is the number of students in need of special education or special education and related services according to criteria set forth in rules promulgated pursuant to §§ 13-37-1.1 and 13-37-46 submitted to the Department of Education in accordance with rules promulgated pursuant to § 13-37-1.1;

(14) "Average daily membership," the average number of kindergarten through twelfth grade pupils enrolled in all schools operated by the school district during the previous regular school year plus the average number of pupils for whom the district pays tuition;

(15) "Nonpublic school," a sectarian organization or entity which is accredited by the secretary of education for the purpose of instructing children of compulsory school age. This definition excludes any school that receives a majority of its revenues from public funds;

(16) "Nonpublic average daily membership," the average number of children under age sixteen who are approved for alternative instruction pursuant to § 13-27-2 during the previous school year plus:

(a) For nonpublic schools located within the boundaries of a public school district with an average daily membership of six hundred or more during the previous school year, the average number of kindergarten through twelfth grade pupils enrolled during the previous regular school year in all nonpublic schools located within the boundaries of the public school district;

(b) For nonpublic schools located within the boundaries of a public school district with an average daily membership of less than six hundred during the previous school year, the average number of resident kindergarten through twelfth grade pupils enrolled during the previous school year in all nonpublic schools located within the State of South Dakota;

(17) "Special education average daily membership," average daily membership plus nonpublic average daily membership;

(18) "Local need," an amount to be determined as follows:

(a) Multiply the special education average daily membership by 0.1013 and multiply the result by the allocation for a student with a level one disability;

(b) Multiply the number of students having a level two disability as reported on the child count for the previous school fiscal year by the allocation for a student with a level two disability;

(c) Multiply the number of students having a level three disability as reported on the child count for the previous school fiscal year by the allocation for a student with a level three disability;

- 1 (d) Multiply the number of students having a level four disability as reported on
- 2 the child count for the previous school fiscal year by the allocation for a
- 3 student with a level four disability;
- 4 (e) Multiply the number of students having a level five disability as reported on
- 5 the child count for the previous school fiscal year by the allocation for a
- 6 student with a level five disability;
- 7 (f) Multiply the number of students having a level six disability as reported on the
- 8 child count for the previous school fiscal year by the allocation for a student
- 9 with a level six disability;
- 10 (g) Sum the results of (a) through (f);
- 11 (19) "Effort factor," the school district's special education tax levy in dollars per thousand
- 12 divided by ~~\$1.25~~ \$1.20. The maximum effort factor is 1.0.

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

119L0486

SENATE APPROPRIATIONS COMMITTEE

ENGROSSED NO. **HB 1082** - 02/28/2005

Introduced by: Representatives Putnam, Buckingham, Cutler, Dennert, Elliott, Faehn, Fryslie, Hargens, Haverly, Hunhoff, Hunt, Koistinen, McCoy, McLaughlin, Miles, Murschel, Pederson (Gordon), Rave, Roberts, Rounds, Sebert, Sigdestad, Thompson, Tornow, Wick, and Willadsen and Senators Olson (Ed), Abdallah, Adelstein, Bartling, Duniphan, Hundstad, Koetzle, Kooistra, Koskan, McCracken, Napoli, Schoenbeck, and Sutton (Dan)

1 FOR AN ACT ENTITLED, An Act to appropriate money for postsecondary technical education
2 enhancement.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. There is hereby appropriated from the state general fund, after the transfer of
5 earnings from the education enhancement trust fund created in Article XII, Section 6 of the
6 South Dakota Constitution, pursuant to § 4-5-29.2, the sum of one million four hundred
7 thousand dollars (\$1,400,000), or so much thereof as may be necessary, to the Department of
8 Education for grants to the four postsecondary technical institutes.

9 Section 2. The secretary of the Department of Education shall approve vouchers and the
10 state auditor shall draw warrants to pay expenditures authorized by this Act.

11 Section 3. Any amounts appropriated in this Act not lawfully expended or obligated by
12 June 30, 2006, shall revert in accordance with § 4-8-21.



State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

571L0553

SENATE TAXATION COMMITTEE ENGROSSED NO.

HB 1122 - 02/25/2005

This bill has been extensively amended (houghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Representatives Wick, Brunner, Cutler, Davis, Deadrick, Dykstra, Faehn, Frost, Garnos, Gassman, Glover, Hackl, Haley, Halverson, Hargens, Heineman, Jensen, Koistinen, Lange, Michels, Murschel, O'Brien, Rave, Schafer, Sebert, Tornow, Turbiville, Weems, and Willadsen and Senators Kelly, Abdallah, Bartling, Bogue, Broderick, Duenwald, Duniphan, Earley, Gant, Hansen (Tom), Hanson (Gary), Lintz, McCracken, Moore, Nesselhuf, Olson (Ed), Peterson (Jim), Schoenbeck, and Sutton (Dan)

1 FOR AN ACT ENTITLED, An Act to provide certain contractor's excise, sales, and use tax
2 refunds.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That section 2 of House Bill 1261 as previously enacted by the 2005 South
5 Dakota Legislature be amended to read as follows:

6 For the purposes of this Act, the term, new business facility, means a new building or
7 structure or the expansion of an existing building or structure, including a power generation
8 facility, the construction of which is subject to the contractor's excise tax pursuant to chapter
9 10-46A or 10-46B. A new business facility does not include any building or structure:

10 (1) Used predominantly for the sale of products at retail, other than the sale of electricity
11 at retail, to individual consumers;

12 (2) Used predominantly for residential housing or transient lodging;



1 (3) Used predominantly to provide health care services; or

2 (4) That is not subject to ad valorem real property taxation or equivalent taxes measured
3 by gross receipts.

4 Section 2. That § 10-45B-6 be amended to read as follows:

5 10-45B-6. Any person desiring to claim a refund pursuant to ~~§ 10-45B-2~~ this chapter shall
6 apply for a permit from the secretary at least thirty days prior to ~~commencement of the project~~
7 the construction date. However, any project with a construction date between February 1, 2005,
8 and July 1, 2005, that would otherwise qualify for a refund shall apply for a permit by August 1,
9 2005. The application for a permit shall be submitted on a form prescribed by the secretary. A
10 separate application shall be made and submitted for each project. Upon approval of the
11 application, the secretary shall issue a permit entitling the applicant to submit refund claims as
12 provided by §§ 10-45B-7 and 10-45B-8. Such permit or refund claims are not assignable or
13 transferable except as collateral or security pursuant to chapter 57A-9.

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

209L0582

SENATE EDUCATION COMMITTEE ENGROSSED NO.

HB 1140 - 02/24/2005

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Representatives Buckingham, Bradford, Brunner, Dykstra, Elliott, Hargens, McCoy, Roberts, and Schafer and Senators Peterson (Jim), Bartling, Gray, Hansen (Tom), Hanson (Gary), Kloucek, Koetzle, Kooistra, Moore, Nesselhuf, Olson (Ed), and Sutton (Dan)

1 FOR AN ACT ENTITLED, An Act to revise the calculation of state aid to education and report.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. The calculation of state aid to education as defined in § 13-13-10.1 shall be
4 amended as follows:

5 (1) Revise the index factor to more accurately reflect current economic conditions;

6 (2) Revise the calculation of adjusted average daily membership to include components
7 of sparsity and distance education;

8 (3) Base state aid calculations on the data from the current school year rather than the
9 previous school year;

10 (4) Set a minimum average daily membership that a high school must maintain in order
11 to be eligible to receive state aid to education taking into consideration the distance
12 between high schools;

13 (5) Equalize other revenue through their inclusion in the state aid to education



1 foundation program;

2 (6) Create a school report card with district information including both academic
3 measures and current and projected financial conditions.

4 The revisions to the formula outlined in this Act shall be implemented on a multi-year basis,
5 and they may not result in a higher percentage of statewide local effort.

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

308L0677

SENATE EDUCATION COMMITTEE ENGROSSED NO.

HB 1149 - 02/24/2005

This bill has been extensively amended (houghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Representatives Dennert, Deadrick, Glenski, Pederson (Gordon), and Rave
and Senators Bartling, Hanson (Gary), and Moore

1 FOR AN ACT ENTITLED, An Act to allow the Department of Education to enter into certain
2 enrollment agreements with the State of North Dakota and to compensate certain school
3 districts for lost revenue due to the agreements.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. The secretary of the Department of Education may enter into agreements with
6 the appropriate parties from the state of North Dakota to establish an enrollment options
7 program between South Dakota and North Dakota.

8 Section 2. Any agreement entered into pursuant to this Act shall specify the following:

- 9 (1) For students who are not residents of South Dakota, the enrollment options program
10 applies only to a student whose resident school district borders South Dakota;
- 11 (2) If North Dakota sends more students to South Dakota than South Dakota sends to
12 North Dakota, North Dakota will pay South Dakota an amount agreed upon for the
13 excess number of students sent to South Dakota;
- 14 (3) If South Dakota sends more students to North Dakota than North Dakota sends to



1 South Dakota, South Dakota will pay North Dakota an amount agreed upon for the
2 excess number of students sent to North Dakota.

3 Section 3. Any agreement entered into pursuant to this Act shall specify the application
4 procedures for the enrollment options program between South Dakota and North Dakota.

5 Section 4. Any agreement entered into pursuant to this Act shall specify the reasons for
6 which an application for the enrollment options program between South Dakota and North
7 Dakota may be denied.

8 Section 5. Any agreement entered into pursuant to this Act shall specify that a South Dakota
9 school district is not responsible for transportation for any resident student attending school in
10 North Dakota under the provisions of this Act. However, a South Dakota school district may,
11 at its discretion, provide transportation services for such a student.

12 Section 6. Any agreement entered into pursuant to this Act may specify additional terms
13 relating to any student in need of special education or special education and related services
14 pursuant to chapter 13-37.

15 Section 7. For the purposes of state aid to education distributed pursuant to chapter 13-13,
16 any student sent to South Dakota from North Dakota is included in the receiving school district's
17 average daily membership.

18 Section 8. For the purposes of state aid to education distributed pursuant to chapter 13-13,
19 any student sent to North Dakota from South Dakota may not be included in the resident school
20 district's average daily membership.

21 Section 9. Any student whose resident school district does not receive state aid to education
22 under the provisions of chapter 13-13 or 13-37 may not attend school in North Dakota unless
23 the student's resident school district pays the State of South Dakota an amount equal to the per
24 student allocation as defined in chapter 13-13 or 13-37 for each student sent to North Dakota.

1 Section 10. The Department of Education may promulgate rules pursuant to chapter 1-26
2 to establish procedures relating to the application process and the collection or payment of funds
3 under the provisions of any agreement established pursuant to this Act.

4 Section 11. For fiscal years 2006, 2007, and 2008, any school district contiguous to the
5 North Dakota border that receives less revenue under the terms of this Act than it would have
6 otherwise received is entitled to a payment from the Department of Education to compensate
7 for the difference. For fiscal year 2006, the payment shall equal seventy-five percent of the
8 difference; for fiscal year 2007, the payment shall equal fifty percent of the difference; and for
9 fiscal year 2008, the payment shall equal twenty-five percent of the difference.

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

668L0723

SENATE EDUCATION COMMITTEE ENGROSSED NO.

HB 1170 - 02/24/2005

This bill has been extensively amended (houghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Representative Heineman

1 FOR AN ACT ENTITLED, An Act to provide for the certification of distance learning
2 providers and to provide for the endorsement of distance learning instructors and to
3 authorize the Board of Education to promulgate rules relating to distance learning courses.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. For purposes of this Act, distance learning is the technology and educational
6 process used to provide instruction when the student and primary instructor are not physically
7 present at the same time or place.

8 Section 2. No distance learning provider may provide courses through distance learning to
9 any student in an accredited elementary or secondary school in this state unless the distance
10 learning provider has a certificate issued by the secretary of the Department of Education
11 authorizing the distance learning provider to provide the courses.

12 Section 3. The South Dakota Board of Education shall promulgate rules pursuant to chapter
13 1-26 defining a distance learning provider, and establishing the requirements and criteria that
14 an applying provider must meet in order to be issued a distance learning certificate by the
15 secretary of the Department of Education. The rules shall specify the duration and the method



1 of renewal, the amount of the fee, not to exceed one hundred dollars, for issuing a certificate,
2 the application procedures for a certificate, the requirements for certification, and other
3 procedures necessary for the administration of distance learning certification.

4 Section 4. The board shall also promulgate rules pursuant to chapter 1-26 establishing
5 priorities and eligibility for distance learning courses.

State of South Dakota

EIGHTIETH SESSION LEGISLATIVE ASSEMBLY, 2005

519L0596

HOUSE TAXATION COMMITTEE ENGROSSED NO.

HB 1180 - 02/15/2005

Introduced by: Representatives Schafer, Hanks, Hills, McLaughlin, and Turbiville and
Senators Olson (Ed), Dempster, Duniphan, Gray, Kelly, McCracken, and
Nesselhuf

1 FOR AN ACT ENTITLED, An Act to revise certain provisions concerning business
2 improvement districts and to exempt general occupational tax receipts from the sales and
3 gross receipts taxes.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. That § 9-55-3 be amended to read as follows:

6 9-55-3. Any money generated pursuant to § 9-55-2 may be used for any one or more of the
7 following purposes:

- 8 (1) The acquisition, construction, maintenance, and operation of public off-street parking
9 facilities for the benefit of the district area;
- 10 (2) Improvement of any public place or facility in the district area, including landscaping
11 and plantings;
- 12 (3) Construction or installation of convention or event centers, pedestrian shopping malls
13 or plazas, sidewalks, including moving sidewalks, parks, meeting and display
14 facilities, bus stop shelters, lighting, benches or other seating furniture, sculptures,



1 trash receptacles, shelters, fountains, skywalks, and pedestrian and vehicular
2 overpasses and underpasses or any useful or necessary public improvement;

3 (4) Leasing, acquiring, constructing, reconstructing, extending, maintaining, or repairing
4 parking lots or parking garages, both above and below ground, or other facilities for
5 the parking of vehicles, including the power to install such facilities in public areas,
6 whether such areas are owned in fee or by easement, in the district area;

7 (5) Creation and implementation of a plan for improving the general architectural design
8 of public areas in the district area;

9 (6) The development of any activities and promotion of ~~events in~~ the district area;

10 (7) Maintenance, repair, and reconstruction of any improvements or facilities authorized
11 by this chapter;

12 (8) Any other project or undertaking for the betterment of the facilities in the district
13 area, whether the project is capital or noncapital in nature;

14 (9) Enforcement of parking regulations within the district area; and

15 (10) Employing or contracting for personnel, including administrators for any
16 improvement or promotional program under this chapter, and providing for any
17 service necessary or proper to carry out the purposes of this chapter.

18 Section 2. That § 9-55-4 be amended to read as follows:

19 9-55-4. A business improvement district may only be created as provided by this chapter and
20 shall be within the boundaries of an established business area of the municipality zoned for
21 business, public, or commercial purposes. For the purposes of this chapter, an established
22 business area, may also include noncontiguous property within the incorporated municipality
23 that has a common zoning designation.

24 Section 3. That § 9-55-7 be amended to read as follows:

1 9-55-7. Upon receiving a recommendation from the business improvement board, the
2 governing body may create one or more business improvement districts by adopting a resolution
3 of intent to establish a district or districts. The resolution shall contain the following
4 information:

- 5 (1) A description of the boundaries of any proposed district;
- 6 (2) The time and place of a hearing to be held by the governing body to consider
7 establishment of a district or districts;
- 8 (3) The proposed public facilities and improvements to be made or maintained within
9 any such district; and
- 10 (4) The proposed or estimated costs for improvements, facilities and activities within any
11 district, and the method by which the revenue shall be raised. If a special assessment
12 is proposed, the resolution also shall state the proposed method of assessment.

13 The notice of intent shall recite that the method of raising revenue shall be fair and
14 equitable. In the use of a general occupation tax, the tax shall be based primarily on the square
15 footage of the owner's and user's place of business or based on rooms rented by any lodging
16 establishment to transient guests as defined in § 10-45-7. If the occupational tax is based on
17 rooms rented by a lodging establishment, the tax shall be imposed on the transient guest and
18 such tax may not exceed two dollars per occupied room per night. However, no occupational
19 tax may be imposed on any transient guest who has been offered a room by a lodging
20 establishment on a complimentary basis and no fee or rent was charged for such room. In the
21 use of a special assessment, the assessment shall be based upon the special benefit to the
22 property within the district.

23 Section 4. That § 9-55-10 be amended to read as follows:

24 9-55-10. If a hearing is held under subdivision 9-55-7(2), the governing body shall:

- 1 (1) Hear all protests and receive evidence for or against the proposed action;
- 2 (2) Rule upon all written protests received prior to the close of the hearing, which ruling
- 3 shall be final; and
- 4 (3) Continue the hearing from time to time as the governing body ~~may deem~~ deems
- 5 necessary.

6 If a special assessment is to be used, the proceedings shall terminate if written protest is
7 made prior to the close of the hearing by the owners of a majority of the assessable front footage
8 in the proposed district. If an occupation tax is to be used, the proceedings shall terminate if
9 protest is made by the users of a majority of the space in the proposed district. If the general
10 occupational tax is based upon rented hotel and motel rooms pursuant to ~~§ 9-55-13~~ § 9-55-7,
11 the proceedings shall terminate if written protest is made prior to the close of the hearing by the
12 owners of a majority of the hotels and motels in the proposed district.

13 Any bonds for the construction of a convention facility that are payable from the proceeds
14 of the hotel and motel room general occupational tax may only be issued and sold if at least two-
15 thirds of the hotel and motel owners in the proposed district approve in writing of the issuance
16 and sale of the bonds.

17 Section 5. That § 9-55-13 be amended to read as follows:

18 9-55-13. A municipality may levy a special assessment against the real property located in
19 a district, to the extent of the special benefit on such property, for the purpose of paying all or
20 any part of the total costs and expenses of any project authorized by this chapter, within ~~such~~
21 the district. The amount of each special assessment shall be determined by the governing body.
22 Assessments shall be levied in accordance with the method of assessment proposed in the
23 ordinance creating the district. If the governing body finds that the proposed method of
24 assessment does not provide a fair and equitable method of apportioning costs, then it the

1 governing body may assess the costs under ~~such a method as~~ the governing body finds to be fair
2 and equitable. ~~If the public improvement consists of convention facilities, the general~~
3 ~~occupation tax may be based on rented hotel and motel rooms and units offered and let for~~
4 ~~overnight occupancies of less than thirty continuous calendar days, which tax may not exceed~~
5 ~~two dollars per occupied room per night.~~ Notice of a hearing on any special assessments to be
6 levied under this chapter shall be given to the landowners in ~~such~~ the district by publication of
7 the description of the land, the amount proposed to be assessed, and the general purpose for
8 which ~~such~~ the assessment is to be made, once a week for two weeks in a daily or weekly
9 newspaper of general circulation published in the municipality. The notice shall be published
10 at least thirty days prior to the hearing and shall provide the date, time, and place of the hearing
11 to hear any objections or protests by landowners in the district as to the amount of assessment
12 made against their property. All special assessments levied under this chapter ~~shall be~~ constitute
13 liens on the property and shall be certified for collection and collected in the same manner as
14 other special assessments.

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

400L0526

SENATE STATE AFFAIRS COMMITTEE ENGROSSED NO. HB 1212 - 02/18/2005

Introduced by: The Committee on State Affairs at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to professional and
2 occupational licensing boards.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 36-4-1 be amended to read as follows:

5 36-4-1. ~~There is hereby created a~~ The State Board of Medical and Osteopathic Examiners,
6 hereinafter called the Board of Examiners, ~~which board shall consist of six~~ consists of nine
7 members to be appointed by the Governor for terms of ~~five~~ three years. No member may serve
8 more than three consecutive full terms. However, appointment to an unexpired term is not
9 considered a full term for this purpose. Each member shall hold office until ~~his~~ a successor is
10 appointed and qualified. ~~All vacancies~~ Any vacancy on the board shall be filled by appointment
11 by the Governor, ~~but the board must.~~ The board shall at all times include ~~four~~ six doctors of
12 medicine and one doctor of osteopathy. The Governor may stagger terms to enable the board
13 to have different terms expire each year. Any member appointed to the board prior to July 1,
14 2005, shall serve the five-year term to which the member was originally appointed. Any member
15 appointed to the board after July 1, 2005, shall serve a three-year term.



Section 2. That § 36-4-2 be amended to read as follows:

36-4-2. The Board of Examiners shall include ~~four~~ six doctors of medicine holding a degree of M.D., and one doctor of osteopathy holding the degree of D.O. ~~Such~~ The members of the board ~~must~~ shall be licensed in the State of South Dakota, and ~~must~~ shall be skilled and capable physicians in good standing.

Section 3. That § 36-4-2.1 be amended to read as follows:

36-4-2.1. The membership of the Board of Examiners shall include ~~one lay member who is a user~~ two lay members who are users of the services regulated by the board. ~~The term lay member who is a user refers to a person who is not licensed by the board but where practical uses the service licensed, and the meaning shall be liberally construed to implement the purpose of this section. The lay member shall be appointed by the Governor and~~ One lay member may be a nonphysician health care professional licensed by the board. The Governor shall appoint the lay members. The lay members shall have the same term of office as other members of the board.

Section 4. That § 36-4-34 be amended to read as follows:

36-4-34. ~~Whenever it shall appear~~ If it appears from evidence satisfactory to the Board of Examiners that any person has violated the provisions of this chapter or that any licensee under this chapter has been guilty of unprofessional or dishonorable conduct or is ~~grossly~~ incompetent, the board ~~shall have the right to~~ may apply for an injunction in any court of competent jurisdiction to restrain ~~such~~ the person or licensee from continuing to practice medicine, osteopathy, surgery, or obstetrics in any of their branches in this state. Application for an injunction is an alternate to criminal proceedings, and the commencement of one proceeding by the board constitutes an election.

Section 5. That § 36-4A-3.1 be amended to read as follows:

1 36-4A-3.1. The board shall appoint a physician assistant advisory committee composed of
2 three physician assistants. Each committee member shall serve a term of three years,~~except~~
3 ~~initial appointees whose terms.~~ However, the terms of initial appointees shall be staggered so
4 that no more than one member's term expires in one year. ~~A~~ No committee member may ~~not~~ be
5 appointed to more than ~~two~~ three consecutive full terms. If a vacancy occurs, the board shall
6 appoint a person to fill the unexpired term. The appointment of a member to an unexpired term
7 is not considered a full term. The committee shall meet at least annually or as deemed necessary
8 to conduct business. The advisory committee shall assist the board in evaluating standards of
9 physician assistant care and the regulation of physician assistants pursuant to this chapter. The
10 committee shall also make recommendations to the board regarding rules promulgated pursuant
11 to this chapter.

12 Section 6. That § 36-4A-37 be amended to read as follows:

13 36-4A-37. The South Dakota State Board of Medical and Osteopathic Examiners ~~shall have~~
14 ~~the right to~~ may deny the issuance or renewal of a license or suspend or revoke the license of
15 any physician assistant issued under this chapter upon satisfactory proof, in compliance with
16 chapter 1-26, of such person's:

- 17 (1) ~~Gross incompetence~~ Incompetence or unprofessional or dishonorable conduct as
18 defined in § 36-4-30;
- 19 (2) Violation of this chapter in any respect;
- 20 (3) Failure to notify the board, in writing, of the termination of the contract with ~~his~~ the
21 person's supervising physician within seven days after ~~such~~ the termination;
- 22 (4) Rendering medical services beyond the specific tasks allowed to the physician
23 assistant; or
- 24 (5) Rendering medical services without supervision of a physician as required by law and

1 the rules ~~and regulations~~ of the board.

2 Section 7. That chapter 36-4B be amended by adding thereto a NEW SECTION to read as
3 follows:

4 The board shall appoint an advanced life support personnel advisory committee composed
5 of four members as follows:

- 6 (1) One emergency medical technician-intermediate/85;
- 7 (2) One emergency medical technician-intermediate/99;
- 8 (3) One emergency medical technician-paramedic; and
- 9 (4) One emergency room physician.

10 Each committee member shall serve a term of three years. However, the terms of initial
11 appointees shall be staggered so that no more than two members' terms expire in one year. No
12 committee member may be appointed to more than three consecutive full terms. If a vacancy
13 occurs, the board shall appoint a person to fill the unexpired term. The appointment of a person
14 to an unexpired term is not considered a full term. The committee shall meet at least annually
15 or as deemed necessary to conduct business. The advisory committee shall assist the board in
16 evaluating standards of care for advanced life support personnel and the regulation of advanced
17 life support personnel pursuant to this chapter. The committee shall also make recommendations
18 to the board regarding rules promulgated pursuant to this chapter.

19 Section 8. That § 36-4B-31 be amended to read as follows:

20 36-4B-31. The board may deny the issuance or renewal of a license or suspend or revoke the
21 license of any advanced life support personnel issued under this chapter upon satisfactory proof
22 of ~~such individual's gross~~ the person's incompetence, or unprofessional or dishonorable conduct
23 as defined in § 36-4-30 or proof of a violation of this chapter.

24 Section 9. That § 36-4C-4 be amended to read as follows:

36-4C-4. The board shall appoint a Respiratory Care Practitioners' Advisory Committee composed of five members as follows:

- (1) Two registered respiratory therapists;
- (2) Two certified respiratory therapists; and
- (3) A physician licensed pursuant to chapter 36-4 who practices as a pulmonologist.

~~Committee members shall be selected from a list of nominees by the South Dakota affiliate of the American Association for Respiratory Care.~~ Each committee member shall serve a term of three years, ~~except. However, the terms of initial appointees whose terms~~ shall be staggered so that no more than two members' terms expire in any one year. No committee member may be appointed to more than three consecutive full terms. If a vacancy occurs, the board shall appoint a person to fill the unexpired term. The appointment of a person to an unexpired term is not considered a full term. The committee shall meet at least annually or as deemed necessary to conduct business.

The advisory committee shall assist the board in evaluating the qualifications of applicants for licensure and reviewing the examination results of applicants. The committee shall also make recommendations to the board regarding rules promulgated pursuant to this chapter.

Section 10. That § 36-4C-16 be amended to read as follows:

36-4C-16. A proceeding for cancellation, revocation, or suspension of a license or temporary permit may be initiated if the board has written information that any person may have been guilty of any misconduct pursuant to § 36-4C-15 or is guilty of ~~gross~~ incompetence or unprofessional or dishonorable conduct.

Section 11. That § 36-5-2 be amended to read as follows:

36-5-2. Any person who ~~shall practice or attempt~~ practices or attempts to practice chiropractic or who ~~shall use~~ uses the title chiropractor or any word or title having a tendency

1 to induce any person to believe that ~~he~~ the person is a chiropractor without first having secured
2 a license from the Board of Chiropractic Examiners ~~and secured an annual certificate of~~
3 ~~registration from the South Dakota Chiropractors Association and or~~ an annual license renewal
4 from the Board of Chiropractic Examiners is guilty of a Class 1 misdemeanor. The state's
5 attorneys shall enforce the provisions of this chapter within their respective counties.

6 Section 12. That § 36-5-3 be amended to read as follows:

7 36-5-3. The Board of Chiropractic Examiners shall be composed of one lay person and four
8 members who are chiropractors, and appointed by the Governor for terms of three calendar
9 years. ~~Any~~ No member may serve more than three consecutive full terms. The Governor shall,
10 by appointment, fill any vacancy occurring in ~~such board shall be filled by appointment by the~~
11 ~~Governor~~ the board. The appointment to an unexpired term is not considered a full term. The
12 Governor may stagger terms to enable the board to have different terms expire each year.

13 Section 13. That § 36-5-14.1 be amended to read as follows:

14 36-5-14.1. Each person receiving a license under the provisions of this chapter shall procure
15 from the secretary-treasurer of the board on or before the thirty-first day of December of each
16 year, a renewal of license. The renewal shall be issued by the secretary-treasurer upon payment
17 of the fee to be fixed in a rule, promulgated by the board pursuant to chapter 1-26, not exceeding
18 the sum of three hundred dollars. The renewal license shall be in the form of a receipt
19 acknowledging payment of the required fee and signed by the secretary-treasurer ~~and shall be~~
20 ~~issued only to persons certified by the South Dakota Chiropractors Association as members in~~
21 ~~good standing as defined in § 36-5-18.~~

22 Section 14. That § 36-5-16 be amended to read as follows:

23 36-5-16. The board may, in compliance with chapter 1-26, refuse to grant a license to any
24 person otherwise qualified, and may revoke the license of any chiropractor who is not of good

1 moral character, ~~or~~; who solicits professional patronage by agents, ~~or~~; who is guilty of gross
2 unprofessional conduct, ~~or~~ incompetency, ~~or~~ habitual intoxication ~~or~~, the use of narcotics, ~~or~~ of
3 fraud, or deception, ~~or~~; who shall be convicted of a felony; ~~;~~ or who ~~shall practice~~ practices
4 contrary to the provisions of this chapter or the rules ~~and regulations~~ of the board. The board
5 shall define by rule the foregoing grounds for revocation and refusal.

6 Section 15. That § 36-5-18 be amended to read as follows:

7 36-5-18. The South Dakota Chiropractors Association, composed of ~~all~~ the licensed
8 chiropractors in this state, ~~hereby reconstituted to electing to participate, shall~~ improve, promote,
9 and further, by educational work, the qualifications of its members and the art, science, and
10 practice of chiropractic, ~~shall issue an annual certificate of registration upon such terms as it~~
11 ~~shall provide to each member, and make a report to the secretary of the Department of~~
12 ~~Commerce and Consumer Affairs. The association shall certify to the Board of Chiropractic~~
13 ~~Examiners annually on January fifteenth, the names of all chiropractors who are current on~~
14 ~~payment of dues.~~

15 ~~— The association may enact bylaws to regulate its affairs.~~

16 Section 16. That § 36-6A-2 be repealed.

17 ~~— 36-6A-2. Any appointment for a full term under § 36-6A-1 or to fill any vacancy among the~~
18 ~~professional members on the Board of Dentistry shall be made by the Governor. A list of~~
19 ~~dentists and dental hygienists recommended by the South Dakota State Dental Association and~~
20 ~~South Dakota Dental Hygienists Association, respectively, shall be furnished to the Governor~~
21 ~~at least ninety days prior to the expiration of an applicable term, or, in cases of vacancies, within~~
22 ~~sixty days after the occurrence of such vacancy. Such list shall contain not less than two~~
23 ~~professional members for each membership to be filled.~~

24 Section 17. That § 36-6A-4 be amended to read as follows:

1 36-6A-4. No member of the board may serve more than ~~two~~ three consecutive full terms.
2 ~~Appointments to such board shall be made by the Governor~~ However, appointment of a person
3 to an unexpired term is not considered a full term for this purpose. The Governor shall make
4 appointments to the board for terms of ~~five~~ three years. Each member shall hold office until a
5 successor is appointed and qualified. ~~Any vacancy shall be filled by appointment of the~~
6 ~~Governor~~ The Governor shall, by appointment, fill any vacancy for the balance of the unexpired
7 term. The Governor may stagger terms to enable the board to have different terms expire each
8 year. Any member appointed to the board prior to July 1, 2005, shall serve the five-year term
9 to which the member was originally appointed. Any member appointed to the board after July 1,
10 2005, shall serve a three-year term.

11 Section 18. That § 36-7-3 be amended to read as follows:

12 36-7-3. The State Board of Examiners in Optometry ~~shall consist~~ consists of four members
13 appointed by the Governor, three of whom shall be fully qualified and licensed to prescribe and
14 administer diagnostic and therapeutic pharmaceutical agents under this chapter. Each member
15 ~~must~~ shall have been a resident of this state actually engaged in the practice of optometry at least
16 five years preceding the appointment. The term of each member is three years commencing on
17 July first, ~~and all vacancies shall be filled by appointment of the Governor.~~ The Governor shall,
18 by appointment, fill any vacancy. No member may serve more than three consecutive full terms.
19 The appointment of a person to an unexpired term is not considered a full term. No member of
20 any optical school or college, or instructor in optometry, or person connected therewith, or any
21 jobber or jobber's representative, is eligible for the board.

22 Section 19. That § 36-7-24 be amended to read as follows:

23 36-7-24. The Board of Examiners, in compliance with chapter 1-26, may revoke the
24 certificate of any registrant for any one, or any combination, of the following causes:

- 1 (1) Conviction of a felony, as shown by a certified copy of the record of the court of
- 2 conviction;
- 3 (2) Obtaining of, or an attempt to obtain, a certificate of registration by fraudulent
- 4 misrepresentation;
- 5 (3) ~~Gross malpractice~~ Malpractice;
- 6 (4) Continued practice by a person knowingly having an infectious or contagious disease;
- 7 (5) Habitual drunkenness or habitual addiction to the use of morphine, cocaine, or other
- 8 habit-forming drugs;
- 9 (6) Being guilty of "unprofessional conduct."

10 Section 20. That § 36-8-2 be amended to read as follows:

11 36-8-2. The State Board of Podiatry Examiners shall include three professional members
12 appointed by the Governor, each of whom shall be a resident podiatrist of this state; ~~the~~. The
13 term of each shall be three years, commencing on the first day of July. ~~All vacancies shall be~~
14 ~~filled by appointment by the Governor.~~ No member may serve more than three consecutive full
15 terms. The Governor shall, by appointment, fill any vacancy. The appointment of a person to
16 an unexpired term is not considered a full term.

17 Section 21. That § 36-9-9 be amended to read as follows:

18 36-9-9. The term of office for the members of the Board of Nursing is ~~four~~ three years and
19 expires on July first. Each member shall serve until ~~the member's~~ a successor has been
20 appointed and qualified. ~~A~~ No member may ~~not~~ be appointed to more than ~~two~~ three
21 consecutive full terms. However, appointment of a person to an unexpired term is not
22 considered a full term for this purpose.

23 At the expiration of a term, or if a vacancy occurs, the Governor shall appoint a new board
24 member. The Governor may stagger terms to enable the board to have different terms expire

1 each year. Any member appointed to the board prior to July 1, 2005, shall serve the four-year
2 term to which the member was originally appointed. Any member appointed to the board after
3 July 1, 2005, shall serve a three-year term.

4 Section 22. That § 36-9-49 be amended to read as follows:

5 36-9-49. In compliance with chapter 1-26, the Board of Nursing may deny an application
6 for licensure or certification or may deny, revoke, or suspend a license or certificate and may
7 take other disciplinary or corrective action it considers appropriate in addition to or in lieu of
8 such an action upon proof that the applicant, licensee, or certificate holder has:

- 9 (1) Committed fraud, deceit, or misrepresentation in procuring or attempting to procure
10 licensure or certification;
- 11 (2) Been convicted of a felony. The conviction of a felony means the conviction of any
12 offense which, if committed within the State of South Dakota, would constitute a
13 felony under its laws;
- 14 (3) Engaged in the practice of nursing under a false or incorrect name or under a
15 fictitious or assumed business name which has not been registered pursuant to
16 chapter 37-11 or impersonated another licensee or certificate holder of a like or
17 different name;
- 18 (4) Become addicted to the habitual use of intoxicating liquors or controlled drugs as
19 defined by chapter 34-20B to such an extent as to result in incapacitation from the
20 performance of professional duties;
- 21 (5) Negligently, willfully, or intentionally acted in a manner inconsistent with the health
22 or safety of persons entrusted to his or her care;
- 23 (6) Had a license, certificate, or privilege to practice as a registered nurse, licensed
24 practical nurse, certified registered nurse anesthetist, or clinical nurse specialist

1 denied, revoked, or suspended or had other disciplinary action taken in another state,
2 territory, or foreign country;

3 (7) Violated any provisions of this chapter or the rules promulgated under it;

4 (8) Aided or abetted an unlicensed or uncertified person to practice nursing;

5 (9) Engaged in the practice of nursing during a time his or her license or certificate is
6 lapsed, on inactive status, suspended, or revoked;

7 (10) Been guilty of ~~gross~~ incompetence or unprofessional or dishonorable conduct;

8 (11) Exercised influence within the nurse-patient relationship for the purpose of engaging
9 a patient in sexual activity. For the purpose of this subdivision, the patient is
10 presumed incapable of giving free, full, and informed consent to sexual activity with
11 the nurse; or

12 (12) Engaged in gross sexual harassment or sexual contact.

13 Section 23. That § 36-9A-5.1 be amended to read as follows:

14 36-9A-5.1. The Board of Nursing shall appoint an advanced practice nurse advisory
15 committee composed of two certified nurse midwives and four certified nurse practitioners.
16 Committee members shall be selected from a list of nominees by the Board of Nursing. Each
17 committee member shall serve a term of three years, ~~except.~~ However, the terms of initial
18 appointees whose terms shall be staggered so that no more than two members' terms expire in
19 one year. ~~A~~ No committee member may ~~not~~ be appointed to more than ~~two~~ three consecutive
20 terms. If a vacancy occurs, the board shall appoint a person to fill the unexpired term. The
21 appointment of a person to an unexpired term is not considered a full term. The committee shall
22 meet at least annually, or as deemed necessary, to conduct business. The advisory committee
23 shall assist the boards in evaluating standards of advanced practice nursing care and the
24 regulation of nurse practitioners and nurse midwives pursuant to this chapter. The committee

1 shall also make recommendations to the boards regarding rules promulgated pursuant to this
2 chapter.

3 Section 24. That § 36-9A-30 be amended to read as follows:

4 36-9A-30. The proceedings for revocation or suspension of a license may be initiated if the
5 boards have information that any person may have been guilty of any misconduct as provided
6 in § 36-9A-29, or is guilty of ~~gross~~ incompetence or unprofessional or dishonorable conduct.

7 Section 25. That § 36-10-19 be amended to read as follows:

8 36-10-19. ~~There is hereby established~~ The board shall appoint a physical therapy committee,
9 composed of three physical therapists, which shall assist the Board of Examiners in conducting
10 examinations of persons applying for a license to practice physical therapy ~~and~~. The committee
11 shall assist the Board of Examiners on all matters pertaining to the licensure, practice, and
12 discipline of all persons licensed to practice physical therapy in the State of South Dakota, or
13 the making or abolishing of rules and regulations pertaining to physical therapy. Each committee
14 member shall serve a term of three years. No member may serve more than three consecutive
15 full terms. If a vacancy occurs, the board shall appoint a person to fill the unexpired term. The
16 appointment of a person to an unexpired term is not considered a full term. The committee shall
17 meet at least annually or as deemed necessary to conduct business.

18 Section 26. That § 36-10-20 be repealed.

19 ~~— 36-10-20. The South Dakota Physical Therapy Association shall at any regular or special~~
20 ~~meeting held within six months prior to the existence of any vacancy on the committee,~~
21 ~~nominate two persons for each vacancy, on the committee. All persons appointed to such board~~
22 ~~after the first members shall serve for a period of three years. The Board of Examiners shall~~
23 ~~select from the list of nominees presented to it, as certified by the secretary of the South Dakota~~
24 ~~Physical Therapy Association, persons to serve on such committee.~~

Section 27. That § 36-10-22 be repealed.

~~36-10-22. In the event any vacancy shall arise on such committee by reason of death, retirement, removal from this state, or otherwise of any member serving on such committee, such vacancy shall be filled in the same manner as original appointments thereto are made and the term of the member chosen to fill a vacancy shall be for the remainder of the unexpired term of the committee member he is replacing.~~

Section 28. That § 36-10-39 be amended to read as follows:

36-10-39. The Board of Examiners may cancel, revoke, or suspend the license of any physical therapist or the certificate of any physical therapist assistant issued under this chapter upon satisfactory proof of such a licensee's or certificate holder's ~~gross~~ incompetence, or unprofessional or dishonorable conduct, or proof of a violation of this chapter in any respect.

Section 29. That § 36-10-41 be amended to read as follows:

36-10-41. The proceedings for cancellation, revocation, or suspension of a license may be initiated when the Board of Examiners has information that any person, persons, firms, or corporation may have been guilty of any misconduct as provided in § 36-10-40 or is guilty of ~~gross~~ incompetence or unprofessional or dishonorable conduct.

Section 30. That § 36-10B-4 be amended to read as follows:

36-10B-4. The board shall appoint a nutrition and dietetics advisory committee composed of five members. The members shall be registered dietitians or qualified nutritionists. ~~The committee members shall be selected from a list of nominees provided by the South Dakota Dietetic Association.~~ Each committee member shall serve a term of three years, ~~except.~~ However, the terms of initial appointees ~~whose terms~~ shall be staggered so that no more than two members' terms expire in any one year. No committee member may be appointed to more than three consecutive full terms. If a vacancy occurs, the board shall appoint a person to fill the

1 unexpired term. The appointment of a person to an unexpired term is not considered a full term.

2 The committee may assist the board in evaluating the qualifications of applicants for
3 licensure. The committee may make recommendations to the board regarding rules promulgated
4 pursuant to this chapter.

5 Section 31. That § 36-11-3 be amended to read as follows:

6 36-11-3. ~~The~~ Those registered pharmacists of this state electing to participate shall constitute
7 an association under the name and title of the South Dakota Pharmacists Association, ~~the~~. The
8 purpose of ~~which shall be~~ the association is to serve as the state professional society of
9 pharmacists which represents the profession of pharmacy, enhances the public's awareness of
10 pharmacy, and serves the best interest of public health and pharmacy. The South Dakota
11 Pharmacists Association shall be conducted as a nonprofit corporation pursuant to the terms of
12 its articles of incorporation. The members of the association who have secured a current annual
13 certificate of registration to practice pharmacy in this state and who have elected to participate
14 in the association are entitled to all of the rights and privileges of the association and may vote,
15 serve as an officer or director of the association, and participate in all of the meetings of the
16 association. The association shall hold an annual meeting at such time and place as it
17 determines. ~~It shall report annually to the Governor, recommending the names of at least three~~
18 ~~members who are practicing pharmacists rendering pharmaceutical services to the general public~~
19 ~~in this state and otherwise qualified to be appointed as members of the State Board of Pharmacy.~~

20 Section 32. That § 36-11-4 be amended to read as follows:

21 36-11-4. The State Board of Pharmacy shall include three professional members who shall
22 hold their offices for terms of three years or until their successors are appointed and qualified.
23 ~~On or before the first day of October of each year, or whenever a vacancy shall occur among the~~
24 ~~professional members of such board, the Governor shall appoint a licentiate in pharmacy who~~

1 ~~shall be a member of the South Dakota Pharmacists Association as a member of such board or~~
2 ~~to fill a vacancy therein. The Governor shall have the authority to~~ No member may serve more
3 than three consecutive full terms. The appointment of a person to an unexpired term is not
4 considered a full term. The Governor may remove any member of the board for just cause.

5 Section 33. That § 36-11-6 be amended to read as follows:

6 36-11-6. ~~The association shall annually receive all fees received for renewal of certificates~~
7 ~~of registration as a pharmacist in this state. The board may, upon receipt, pay to the South~~
8 Dakota Pharmacists Association eighty percent of all fees the board receives for renewals of
9 certificates of registration as a pharmacist. The association may shall use the funds for ~~payment~~
10 ~~of expenses of the association, including the following association activities to benefit the public~~
11 and the profession: continuing education, matters related to registration standards for
12 pharmacists, professional service standards, and general operating expenses related to the
13 activities enumerated in this section. The association shall also use funds received to pay any
14 legislated assessment to support a diversion program for chemically impaired pharmacists.
15 Expenditures of funds shall be approved by the president and treasurer of the association. The
16 association shall annually file in the office of the board an itemized statement of the receipts of
17 the association and disbursements from the receipts.

18 Section 34. That § 36-11-9 be amended to read as follows:

19 36-11-9. ~~It shall be the duty of the~~ The Board of Pharmacy to shall report annually to the
20 Governor as provided by law for state officers and boards, ~~and to the South Dakota~~
21 ~~Pharmaceutical Association.~~

22 Section 35. That § 36-11-23 be amended to read as follows:

23 36-11-23. Each pharmacist shall annually by October first each year, pay to the ~~South~~
24 ~~Dakota Pharmacists Association board~~ a registry fee to be fixed by ~~the association and adopted~~

1 ~~by the board in compliance with chapter 1-26, not to exceed one hundred fifty dollars, for which~~
2 ~~the pharmacist shall receive from.~~ Upon payment of the fee by a pharmacist, the Board of
3 ~~Pharmacy a renewal of the~~ shall renew the pharmacist's certificate of registration. Any
4 pharmacist who fails to pay the renewal fee by the due date is subject to suspension of certificate
5 by the board in compliance with chapter 1-26. Any suspended certificate may be reinstated if
6 all delinquent fees have been paid, plus a penalty of twenty-five dollars, and the Board of
7 Pharmacy has approved the application for reinstatement.

8 Section 36. That § 36-12-3 be amended to read as follows:

9 36-12-3. ~~There is hereby created~~ The Governor shall appoint a State Board of Veterinary
10 Medical Examiners ~~to be appointed by the Governor of the State of South Dakota,~~ which shall
11 include three ~~reputable~~ veterinarians ~~who.~~ Each veterinarian shall be graduated a graduate from
12 a college authorized by law to confer degrees of veterinary medicine, ~~and having with~~
13 educational standards equal to those approved by the American Veterinary Medical Association,
14 and each of whom veterinarian shall be licensed and registered under this chapter and actively
15 engaged in the practice of veterinary medicine in the state for a period of five years preceding
16 the appointment. Appointments shall be made for the term of three years. No member of this
17 board shall may serve more than six ~~consecutive years~~ three full terms. The appointment of a
18 person to an unexpired term is not considered a full term.

19 Section 37. That § 36-12-5 be repealed.

20 ~~—36-12-5. The South Dakota State Veterinary Medical Society shall at each annual meeting~~
21 ~~nominate twice the number of veterinarians to be appointed that year on the Board of Veterinary~~
22 ~~Medical Examiners. Such names shall be certified to the Governor by the secretary of such~~
23 ~~society, and the appointment shall be made from the nominees so submitted. If the society fails~~
24 ~~to provide nominees as provided herein then the Governor may appoint from licensed and~~

1 ~~registered members of the veterinary profession in good standing in South Dakota without~~
2 ~~restriction.~~

3 Section 38. That § 36-12-6 be amended to read as follows:

4 36-12-6. The Governor shall remove any member of the Board of Veterinary Examiners
5 upon proper showing of ~~gross~~ neglect of duty or for corrupt conduct in office or any other
6 misfeasance; or malfeasance ~~therein~~ in office.

7 Section 39. That § 36-12-22 be amended to read as follows:

8 36-12-22. The State Board of Veterinary Medical Examiners may, in compliance with
9 chapter 1-26, either refuse to issue a license or refuse to issue a certificate of registration or
10 suspend or revoke a license and certificate of registration upon any of the following grounds:

- 11 (1) Fraud or deception in procuring the license;
- 12 (2) The publication or use of any untruthful or improper statement, or representation,
13 with a view of deceiving the public, or any client or customer in connection with the
14 practice of veterinary medicine;
- 15 (3) Habitual intemperance in the use of intoxicating liquors, or habitual addiction to the
16 use of morphine, cocaine, or other habit-forming drugs; or entry of a plea of guilty
17 to, or nolo contendere to, or conviction of a violation of any federal or state law
18 relating to controlled drugs or substances;
- 19 (4) Immoral, unprofessional, or dishonorable conduct manifestly disqualifying the
20 licensee from practicing veterinary medicine;
- 21 (5) ~~Gross malpractice~~ Malpractice, including failure to furnish to the board, upon written
22 application by it, any report or information relating thereto;
- 23 (6) The employment of an unlicensed person to perform work which under this chapter
24 can lawfully be done only by persons licensed to practice veterinary medicine;

- (7) Fraud or dishonest conduct in applying or reporting diagnostic biological tests or in issuing health certificates;
- (8) Failure to keep one's premises in a reasonably clean and sanitary condition and failure to use reasonably sanitary methods in the practice of veterinary medicine;
- (9) The use, prescription, or sale of any veterinary prescription drug in the absence of a valid veterinary client-patient relationship;
- (10) Professional incompetence which constitutes a deviation from the statewide standard of competence, which is that minimum degree of skill and knowledge necessary for the performance of characteristic tasks of a veterinarian in at least a reasonably effective way.

Section 40. That § 36-13-1 be amended to read as follows:

36-13-1. The Abstracters' Board of Examiners shall be composed of five members appointed by the Governor. Four members of the board shall be abstracters who have been qualified to do the business of abstracting under § 36-13-8 for five years prior to the date of their appointment. Four of these abstracter members shall be members of the South Dakota Land Title Association. The members may not be all of the same political party, and their terms shall be for ~~four~~ three years. Any member appointed to the board prior to July 1, 2005, shall serve the four-year term to which the member was originally appointed. Any member appointed to the board after July 1, 2005, shall serve a three-year term. No board member may serve more than three consecutive full terms. Members of the board shall qualify by taking the oath of office provided by law for public officers.

~~Vacancies~~ The Governor shall, by appointment, fill any vacancy among the professional members of the board ~~shall be filled by appointment~~ for the unexpired term ~~by the Governor~~ from abstracters qualified as provided in this section. Any appointment to an unexpired term is

1 not considered a full term.

2 Section 41. That § 36-13-1.1 be amended to read as follows:

3 36-13-1.1. The membership of the Abstracters' Board of Examiners shall include one lay
4 member who is a user of the services regulated by the board. The term, lay member who is a
5 user, refers to a person who is not licensed by the board but, where practical, uses the service
6 licensed, ~~and the meaning.~~ The term shall be liberally construed to implement the purpose of
7 this section. ~~The lay member shall be appointed by the Governor and~~ Governor shall appoint
8 the lay member. The lay member shall have the same term of office as other members of the
9 board. No lay member of the board may serve more than three consecutive full terms.

10 Section 42. That § 36-14-2 be amended to read as follows:

11 36-14-2. ~~The Governor shall appoint a Board of Barber Examiners herein established, which~~
12 ~~shall include three professional members appointed by the Governor, the.~~ The term of each shall
13 be three years commencing on the first day of July. No member may serve more than three
14 consecutive full terms. However, appointment to fill an unexpired term is not considered a
15 complete term for this purpose. Each of these members shall be a practical barber who has
16 followed the occupation of barber in this state for at least five years immediately preceding ~~his~~
17 the barber's appointment. The Governor may remove a member for cause, and shall fill all
18 vacancies. ~~Members~~ Any member appointed to fill ~~vacancies~~ a vacancy shall serve ~~during the~~
19 remainder of the unexpired term ~~of their predecessors.~~ The Governor may stagger the terms to
20 enable the board to have different terms expire each year.

21 Section 43. That § 36-14-2.1 be amended to read as follows:

22 36-14-2.1. The membership of the Board of Barber Examiners shall include one lay member
23 who is a user of the services regulated by the board. The term, lay member who is a user, refers
24 to a person who is not licensed by the board but, where practical, uses the service licensed, ~~and~~

1 ~~the meaning. The term~~ shall be liberally construed to implement the purpose of this section. ~~The~~
2 ~~lay member shall be appointed by the Governor and~~ The Governor shall appoint the lay member.
3 The lay member shall have the same term of office and is subject to the same limits and
4 conditions as other members of the board.

5 Section 44. That § 36-14-32 be amended to read as follows:

6 36-14-32. The Board of Barber Examiners may refuse to issue or renew, or may suspend or
7 revoke, any certificate of registration for any of the following causes:

- 8 (1) Conviction of a felony;
- 9 (2) ~~Gross malpractice~~ Malpractice or ~~gross~~ incompetency;
- 10 (3) Continued practice by a person knowingly having an infectious or contagious disease;
- 11 (4) Advertising by means of knowingly false or deceptive statements;
- 12 (5) Advertising, practicing, or attempting to practice under a trade name other than one's
13 own;
- 14 (6) Drunkenness, or addiction to the use of habit-forming drugs;
- 15 (7) Immoral or unprofessional conduct;
- 16 (8) The commission of any of the offenses described in § 36-14-36.

17 Section 45. That § 36-15-3 be amended to read as follows:

18 36-15-3. ~~There is created a~~ The Cosmetology Commission ~~which~~ shall perform all functions
19 exercised by the former State Board of Cosmetology. The Cosmetology Commission ~~shall~~
20 ~~consist~~ consists of five members to be appointed by the Governor for a term of ~~four~~ three years;
21 ~~not all of whom shall.~~ No member may serve more than three consecutive full terms. However,
22 appointment to fill an unexpired term is not considered a complete term for this purpose. Not
23 all of the members may be of the same political party. Three members ~~must~~ shall be currently
24 licensed as cosmetologists in this state at the time of their appointment. Two members shall be

lay people. ~~The terms of members who are first appointed after the effective date of this order shall be: two appointed for a term of one year; two appointed for a term of two years; and one for a term of four years, and such initial terms shall be designated by the Governor. Any member appointed to fill a vacancy arising from other than the natural expiration of a term shall serve for only the unexpired portion of the term. The Governor may stagger the terms to enable the commission to have different terms expire each year. Any member appointed to the commission prior to July 1, 2005, shall serve the four-year term to which the member was originally appointed. Any member appointed to the commission after July 1, 2005, shall serve a three-year term.~~ Each member of the commission shall ~~be required to~~ take the oath of office as provided by law for public officials.

Section 46. That § 36-15-58 be amended to read as follows:

36-15-58. The proceedings for cancellation, revocation, or suspension of a license may be initiated when the cosmetology commission has information that any person may have been guilty of any misconduct as provided in § 36-15-56, or is guilty of ~~gross~~ incompetence, ~~negligence~~, or unprofessional or dishonorable conduct.

Section 47. That § 36-16-3 be amended to read as follows:

36-16-3. ~~There is created a~~ The State Electrical Commission ~~which~~ shall perform all functions exercised by the former State Electrical Board. The State Electrical Commission ~~shall consist~~ consists of seven members to be appointed by the Governor for a term of ~~four~~ three years, ~~not all of whom~~. No member may serve more than three consecutive full terms. However, appointment to fill an unexpired term is not considered a complete term for this purpose. Not all of the members shall be of the same political party. ~~The terms of members who are first appointed after the effective date of this order shall be: one appointed for a term of one year; one appointed for a term of two years; two appointed for a term of three years; and one for a term~~

1 ~~of four years, and such initial terms shall be designated by the Governor. Any member appointed~~
2 ~~to fill a vacancy arising from other than the natural expiration of a term shall serve for only the~~
3 ~~unexpired portion of the term. Three of the members appointed shall, where possible, be~~
4 ~~selected from names submitted by private utility companies, rural electrical cooperatives,~~
5 ~~electrical inspectors, electrical contractors, and journeymen electricians. The Governor may~~
6 stagger the terms to enable the commission to have different terms expire each year. Any
7 member appointed to the commission prior to July 1, 2005, shall serve the four-year term to
8 which the member was originally appointed. Any member appointed to the commission after
9 July 1, 2005, shall serve a three-year term. One member shall represent an electric utility, one
10 member shall be a licensed electrical contractor, one member shall be a licensed electrician with
11 at least a journeyman level license and one member shall have fire safety expertise.

12 Section 48. That § 36-16-4 be amended to read as follows:

13 36-16-4. The Governor shall appoint one member of the State Electrical Commission who
14 shall be involved in the education of electrical engineers. This member shall serve without
15 compensation ~~and be appointed biennially.~~

16 Section 49. That § 36-18A-14 be amended to read as follows:

17 36-18A-14. The Board of Technical Professions is ~~hereby~~ created to administer the
18 provisions of this chapter. Each member of the board shall receive a certificate of appointment
19 from the Governor; and shall file with the secretary of state a written oath for the faithful
20 discharge of the member's official duties. The board shall consist of seven members to be
21 appointed by the Governor for a term of ~~four~~ three years. ~~In implementing the four-year terms,~~
22 ~~the Governor shall vary the terms to enable the board to have no more than two terms expire in~~
23 ~~any one year. No member may serve more than three consecutive full terms. However,~~
24 appointment to fill an unexpired term is not considered a complete term for this purpose. The

1 board shall be composed of two professional engineers, two architects, two land surveyors, and
2 one member from the public. ~~Members may be reappointed to succeed themselves. A member~~
3 ~~shall hold over the expiration of a term until a successor is duly appointed and qualified. The~~
4 Governor may stagger the terms to enable the board to have different terms expire each year.
5 Any member appointed to the board prior to July 1, 2005, shall serve the four-year term to
6 which the member was originally appointed. Any member appointed to the board after July 1,
7 2005, shall serve a three-year term.

8 Section 50. That § 36-18A-56 be amended to read as follows:

9 36-18A-56. The board may take action without proof of actual injury on the following
10 violations:

- 11 (1) Has violated any statute, rule, or order that the board has issued or is empowered to
12 enforce;
- 13 (2) Has engaged in conduct or acts that are fraudulent, deceptive, or dishonest whether
14 or not the conduct or acts relate to professional practice;
- 15 (3) Has engaged in conduct or acts that are ~~grossly~~ negligent, incompetent, reckless, or
16 otherwise in violation of established standards related to that person's professional
17 practice;
- 18 (4) Has been convicted of or has pleaded guilty or nolo contendere to a felony, whether
19 or not the person admits guilt, or has been shown to have engaged in acts or practices
20 tending to show that the applicant or licensee is incompetent or has engaged in
21 conduct reflecting adversely on the person's ability or fitness to engage in that
22 person's professional practice. A copy of the record of conviction or plea of guilty or
23 nolo contendere is conclusive evidence;
- 24 (5) Has employed fraud or deception in obtaining a license or renewal of a license or in

1 passing all or a portion of the examination;

2 (6) Has had that person's professional license, registration, certificate, right to
3 examination, or other similar rights to practice revoked, suspended, canceled, given
4 probation, limited, censured, reprimanded, or not renewed for cause in any state or
5 territory of the United States, the District of Columbia, or in any foreign country;

6 (7) Failed to meet any requirement for issuance or renewal of the person's license or
7 certificate;

8 (8) Has used or attempted to use as that person's own the certificate or seal of another;

9 (9) Has used or attempted to use an expired, suspended, or revoked license;

10 (10) Has placed that person's seal or signature to a plan, specification, report, plat, or other
11 technical submission or document not prepared by that person or under that person's
12 responsible charge;

13 (11) Aided or assisted another person in violating any provision of this chapter or the rules
14 pertaining to this chapter;

15 (12) Failed to promptly and appropriately provide information requested by the board as
16 a result of a formal or informal complaint to the board which would indicate a
17 violation of this chapter;

18 (13) Has provided false testimony or information to the board;

19 (14) Failed to report known violations of this chapter;

20 (15) Has engaged in the use of untruthful or improbable statements in advertisements;

21 (16) Failed to complete continuing professional development requirements set by the
22 board;

23 (17) Made misleading or untruthful representations in advertisements or published
24 materials;

(18) Falsely used any title, figures, letters, or descriptions to imply licensure;

(19) Is habitually intoxicated or is addicted to the use of alcohol or illegal drugs;

(20) Has committed an act, engaged in conduct, or committed practices that may result in an immediate threat to the public; or

(21) Has provided professional services in technical areas not covered by that person's license or competency.

Section 51. That § 36-19-2 be amended to read as follows:

36-19-2. The State Board of Funeral Service shall include the secretary of health or ~~his~~ the secretary's designee and five professional members who shall be licensed to practice funeral service, ~~appointed by the Governor, provided that no person shall.~~ The Governor shall appoint the professional members of the board. However, no person may be appointed as a professional member of said the board who has not been licensed in this state, as an embalmer and funeral director, or to practice funeral service, for at least five years prior to his appointment. The term of office of appointed members shall be five three years. All vacancies shall be filled by appointment by the Governor. Nominations of three or more qualified candidates for each appointive term of a professional member, or part thereof, shall be filed with the Governor by the South Dakota Embalmers and Funeral Directors Association. The terms of office shall be so arranged that only one professional member's term will expire each year on June thirtieth. The Governor shall, by appointment, fill any vacancy.

The State Board of Funeral Service shall also include two lay members who are users of the services regulated by the board. The term, lay member who is a user, refers to a person who is not licensed by the board but, where practical, uses the service licensed, ~~and the meaning. The~~ term shall be liberally construed to implement the purpose of this section. ~~The lay members shall be appointed by the Governor and, after the initial appointments, both such~~ The Governor

1 shall appoint the lay members. The lay members shall have the same term of office as other
2 members of the board.

3 No board member ~~shall~~ may serve more than ~~two~~ three consecutive full terms ~~on said board;~~
4 ~~any person serving more than three years under an original appointment or to fill a vacancy shall~~
5 ~~be deemed to have served a full term. However, appointment to fill an unexpired term is not~~
6 considered a complete term for this purpose. The Governor may stagger the terms to enable the
7 board to have different terms expire each year. Any member appointed to the board prior to
8 July 1, 2005, shall serve the five-year term to which the member was originally appointed. Any
9 member appointed to the board after July 1, 2005, shall serve a three-year term.

10 Section 52. That § 36-19-38 be amended to read as follows:

11 36-19-38. The State Board of Funeral Service, acting in compliance with chapter 1-26, may
12 refuse to grant, may suspend, or revoke any license if the license holder ~~thereof~~ or the license
13 applicant ~~therefor~~:

- 14 (1) Obtained ~~said~~ the license by fraud or misrepresentation either in applying for ~~said~~ the
15 license or in passing the examination for ~~said~~ the license;
- 16 (2) Uses intoxicants or drugs to such a degree as to render ~~him~~ the person unfit to
17 practice funeral service or funeral directing;
- 18 (3) Has been convicted of a felony or crime involving moral turpitude; ~~provided,~~
19 ~~however, that. However,~~ upon the conviction of a holder of a valid license, of a
20 felony or crime involving moral turpitude, ~~such~~ the conviction shall immediately and
21 automatically revoke ~~such~~ the license;
- 22 (4) Is not a person of good moral character;
- 23 (5) ~~Shall be~~ Is guilty of ~~gross or willful~~ malpractice in the business of funeral service or
24 funeral directing;

1 (6) ~~Shall be~~ Is guilty of willful violation of any section of this chapter, or any rule ~~or~~
2 ~~regulation~~ of the board, or any rule ~~or regulation~~ of the state or any municipal board
3 or department of health governing the disposition, shipment, or transportation of dead
4 human bodies; or ~~shall~~ willfully ~~fail~~ fails to make any report required by law or by
5 the rules ~~or regulations~~ of the board;

6 (7) ~~Shall sign~~ Signs a certificate stating that ~~he~~ the person embalmed or prepared a dead
7 human body for shipment or burial, whereas in fact, someone, other than the person
8 signing ~~said~~ the certificate, embalmed or prepared ~~such~~ the dead human body for
9 shipment or burial;

10 (8) ~~Shall pay or cause~~ Pays or causes to be paid, directly or indirectly, a commission for
11 the securing of business; or, directly or indirectly ~~solicit~~ solicits such business;
12 ~~provided, however, that.~~ However the soliciting of members or the selling of stock
13 in any cooperative burial association ~~shall not be construed as~~ is not a violation of
14 this subdivision.

15 ~~Provided, however, that if~~ If the license as funeral director ~~be~~ is held by a firm, corporation,
16 association, or organization, the provisions of this section ~~shall~~ apply to the members of the
17 board of directors, officers, and employees, as well as to the firm, corporation, association, or
18 organization.

19 Section 53. That § 36-20B-4 be amended to read as follows:

20 36-20B-4. ~~There is created the~~ The South Dakota Board of Accountancy, which has
21 responsibility for the administration and enforcement of this chapter. ~~The board,~~ consists of six
22 members, all of whom shall be residents of this state. Five members shall be appointed by the
23 Governor for ~~four-year~~ three-year terms. Four of the appointed members shall be holders of
24 active certificates and three of these shall be in the practice of public accountancy. One

1 appointed member shall be a lay member who is not a holder of a certificate under this chapter
2 but shall have had professional or practical experience in the use of accounting services and
3 financial statements, so as to be qualified to make judgments about the qualifications and
4 conduct of persons and firms subject to regulation under this chapter. The auditor general shall
5 serve as an ex officio member. ~~Any~~ The Governor shall, by appointment, fill any vacancy
6 occurring during a term shall be filled by appointment by the Governor for the remainder of the
7 unexpired term. Upon the expiration of the member's term of office, a member shall continue
8 to serve until a successor is appointed and takes office. Any member of the board whose
9 certificate is revoked or suspended shall automatically cease to be a member of the board, ~~and~~
10 ~~the.~~ The Governor may remove any member of the board for cause. No person who has served
11 two successive complete terms is eligible for reappointment, but appointment to fill an
12 unexpired term is not considered a complete term for this purpose. The Governor may stagger
13 the terms to enable the board to have different terms expire each year. Any member appointed
14 to the board prior to July 1, 2005, shall serve the four-year term to which the member was
15 originally appointed. Any member appointed to the board after July 1, 2005, shall serve a three-
16 year term. No member may serve more than three consecutive full terms. However, appointment
17 to fill an unexpired term is not considered a complete term for this purpose.

18 Section 54. That § 36-20B-40 be amended to read as follows:

19 36-20B-40. The board may, in accordance with chapter 1-26, revoke any certificate, license,
20 or permit issued pursuant to this chapter or corresponding provisions of prior law or revoke or
21 limit privileges under this chapter; suspend any such certificate, license, or permit, or refuse to
22 renew any such certificate, license, or permit for a period of not more than five years; reprimand,
23 censure, or limit the scope of practice of any licensee; impose an administrative fine not
24 exceeding one thousand dollars, or place any licensee on probation, all with or without terms,

conditions, and limitations, for any one or more of the following reasons:

- (1) Fraud or deceit in obtaining a certificate or permit;
- (2) Cancellation, revocation, suspension, or refusal to renew a certificate, license, or permit to engage in the practice of public accountancy in any other state for any cause;
- (3) Failure, on the part of a holder of a certificate, license, or permit under this chapter or registration under this chapter, or of a certificate, license or permit issued by another state, to maintain compliance with the requirements for issuance or renewal of such certificate, license, permit, or registration or to report changes to the board;
- (4) Revocation or suspension of the right to practice before any state or federal agency;
- (5) Dishonesty, fraud, or ~~gross~~ repeated acts of negligence in the performance of services as a licensee or individual granted privileges under this chapter or in the filing or failure to file one's own income tax returns;
- (6) Violation of any provision of this chapter or rule, promulgated by the board pursuant to chapter 1-26, or violation of professional standards;
- (7) Violation of any rule of professional conduct promulgated by the board pursuant to chapter 1-26;
- (8) Conviction of a felony, or of any crime an element of which is dishonesty or fraud, under the laws of the United States, of this state, or of any other state if the acts involved would have constituted a crime under the laws of this state;
- (9) Performance of any fraudulent act while holding a certificate, license, or permit or privilege issued under this chapter or prior law;
- (10) Any conduct reflecting adversely upon the licensee's fitness to perform services while a licensee, or individual granted privileges under this chapter;

(11) Making any false or misleading statement or verification, in support of an application for a certificate, registration, or permit filed by another; and

(12) Dishonesty or ~~gross~~ repeated acts of negligence in the performance of peer reviews.

In lieu of or in addition to any remedy specifically provided in this section, the board may require of a licensee a peer review conducted in ~~such~~ the manner as the board may specify or satisfactory completion of ~~such~~ the continuing professional education programs as the board may specify, or both.

In any proceeding in which a remedy provided by this section is imposed, the board may also require the respondent licensee to pay the costs of the proceeding.

Section 55. That § 36-21A-14 be amended to read as follows:

36-21A-14. Each member of the commission shall be appointed for a term of ~~four~~ three years. Any member appointed to the commission prior to July 1, 2005, shall serve the four-year term to which the member was originally appointed. Any member appointed to the commission after July 1, 2005, shall serve a three-year term. No member may serve more than three consecutive full terms. Any member appointed to fill a vacancy arising during a commissioner's term shall serve for the unexpired portion of the term. The appointment to an unexpired term is not considered a full term.

Section 56. That § 36-24-4 be amended to read as follows:

36-24-4. The members of the board enumerated in § 36-24-3 shall be appointed by the Governor ~~from a list of at least five audiologists submitted by the South Dakota Academy of Audiology and a list of at least five hearing aid dispensers submitted by the South Dakota Hearing Aid Dispenser's Association, or from a list of nominees submitted by any member of the public.~~ No member of the board may concurrently serve in an elected, appointed, or employed position in any state professional association or governmental regulatory agency

1 which presents a conflict of interest.

2 Section 57. That § 36-24-5 be amended to read as follows:

3 36-24-5. Board members shall be appointed for a term of three years. ~~However, members~~
4 ~~who are on the board as of July 1, 1997, shall continue to serve until replaced by the Governor.~~

5 Each member shall serve until a successor has been appointed.

6 Section 58. That § 36-24-6 be amended to read as follows:

7 36-24-6. No member of the board may serve more than ~~two~~ three consecutive ~~three-year full~~
8 terms or be reappointed to the board until at least one year after the expiration of the member's
9 ~~second~~ third term of office. The appointment to an unexpired term is not considered a full term.

10 The Governor may remove a member of the board for dishonorable conduct, incompetence, or
11 neglect of duty.

12 Section 59. That § 36-25-3 be amended to read as follows:

13 36-25-3. Members of the State Plumbing Commission shall be appointed for terms of ~~four~~
14 three years. ~~The terms of the members who are first appointed after April 14, 1980, shall be: two~~
15 ~~appointed for a term of one year; two appointed for a term of two years; and one appointed for~~
16 ~~a term of four years, and such initial terms shall be designated by the Governor. Any member~~
17 ~~appointed to fill a vacancy arising from other than the natural expiration of a term shall serve~~
18 ~~for only the unexpired portion of the term. The Governor may stagger the terms to enable the~~
19 commission to have different terms expire each year. Any member appointed to the commission
20 prior to July 1, 2005, shall serve the four-year term to which the member was originally
21 appointed. Any member appointed to the commission after July 1, 2005, shall serve a three-year
22 term. No member may serve more than three consecutive full terms. However, appointment to
23 fill an unexpired term is not considered a complete term for this purpose.

24 Section 60. That § 36-26-3 be amended to read as follows:

1 36-26-3. ~~There is hereby created the~~ The South Dakota Board of Social Work Examiners,
2 ~~which shall consist of five~~ consists of seven members, ~~one of whom must be a lay member who~~
3 ~~is a user of the services regulated by the board, two of whom shall be certified social workers,~~
4 ~~one of whom shall be a social worker and one of whom shall be a social work associate, all~~
5 ~~appointed by the Governor. The term "lay member who is a user" refers to a person who is not~~
6 ~~licensed by the board but where practical uses the services licensed, and the meaning shall be~~
7 ~~liberally construed to implement the purpose of this section~~ two of whom shall be lay members,
8 three of whom shall be certified social workers licensed under the provisions of this chapter to
9 engage in private independent practice, two of whom shall be social worker professionals
10 licensed under the provisions of this chapter each with a minimum of two years practice in the
11 State of South Dakota. The Governor shall appoint all of the members.

12 Section 61. That § 36-26-4 be repealed.

13 ~~36-26-4. In order to be eligible for appointment to the board, a person, other than the lay~~
14 ~~member, shall have practiced social work in the State of South Dakota for not less than two~~
15 ~~years, and shall be properly licensed under the provisions of this chapter.~~

16 Section 62. That § 36-26-5 be amended to read as follows:

17 36-26-5. Appointments to the board shall be for terms of three years, beginning on July first.
18 No member of the board may serve for more than three successive full terms; However,
19 appointment of a member to an unexpired term shall be considered is not considered as a full
20 term.

21 Section 63. That § 36-27A-3 be amended to read as follows:

22 36-27A-3. ~~There is created a~~ The Board of Examiners of Psychologists ~~which shall consist~~
23 ~~of five~~ consists of seven members, ~~one~~ two of whom shall be ~~a lay member~~ lay members. The
24 remaining ~~four~~ five members are to be ~~licensed~~ psychologists licensed pursuant to this chapter

1 at the doctoral level for a minimum of two years and broadly representing a cross section of the
2 profession of psychology. ~~All members shall be appointed by the Governor. The credentials of~~
3 ~~each psychologist on the board shall be documented and shall be public record as provided in~~
4 ~~chapter 1-27. The Governor shall appoint all of the members.~~

5 Section 64. That § 36-27A-4 be repealed.

6 ~~—36-27A-4. Appointments to the Board of Examiners of Psychologists shall be of individuals~~
7 ~~qualified under § 36-27A-5. Initial psychologist members of the board shall complete an~~
8 ~~application for licensure required of applicants for licensure. The board shall act on the~~
9 ~~application of each initial appointee, with the appointee involved abstaining, in order for~~
10 ~~licensure to be granted to that appointee. The term "lay member" means a person who is not~~
11 ~~licensed by the board but who may use the services of a licensed psychologist, and the meaning~~
12 ~~shall be liberally construed to implement the purpose of this section.~~

13 Section 65. That § 36-27A-5 be repealed.

14 ~~—36-27A-5. To be eligible for appointment to the Board of Examiners of Psychologists, a~~
15 ~~person, other than a lay member, shall have a doctoral degree from a regionally accredited~~
16 ~~university or college in a program in psychology and shall have had a supervised psychological~~
17 ~~internship amounting to not less than one thousand eight hundred hours in duration over a~~
18 ~~period of not more than two consecutive calendar years and shall have engaged in the~~
19 ~~postdoctoral practice of psychology in the State of South Dakota for not less than two years. The~~
20 ~~credentials of each psychologist on the board shall be documented and shall be public record~~
21 ~~as provided in chapter 1-27.~~

22 Section 66. That § 36-27A-7 be amended to read as follows:

23 36-27A-7. The Governor may remove a member of the Board of Examiners of Psychologists
24 for cause. If there is a vacancy on the board caused by the death, resignation, or removal from

1 the state of a member or for any other reason, the Governor shall appoint a new member to serve
2 the unexpired term. No member of the board may serve for more than ~~two~~ three successive full
3 terms. The appointment of ~~a member~~ to an unexpired term is not considered a full term.

4 Section 67. That § 36-28-2 be amended to read as follows:

5 36-28-2. ~~There is hereby created~~ The the South Dakota State Board for Nursing Facility
6 Administrators ~~which shall consist~~ consists of eleven members. The members of the board shall
7 be appointed by the Governor and shall include: one licensed physician and one registered
8 nurse, neither of whom ~~shall~~ may be an administrator or an employee of a nursing facility nor
9 have any direct financial interest in nursing facilities; one practicing hospital administrator who
10 is also licensed as a nursing facility administrator; two practicing administrators of proprietary
11 nursing facilities; two practicing administrators of nonprofit nursing facilities; a designee of the
12 secretary of health; a designee of the ~~director of social welfare~~ secretary of social services; and,
13 two members of the general public who are not administrators or employees of a nursing facility
14 and who have no direct financial interest in nursing facilities. The terms of all members shall
15 be three years. No member may serve more than three consecutive full terms. The designees of
16 the health and ~~welfare~~ social services departments shall serve without compensation and
17 reimbursement as provided in § 36-28-25, except that their travel expenses shall be paid by their
18 respective agencies pursuant to § 3-9-2. ~~Appointments to the board shall be made by the~~
19 ~~Governor after consultation with the associations appropriate to the professions representative~~
20 ~~of the vacancies to be filled.~~ The appointment to an unexpired term is not considered a full term.

21 Section 68. That § 36-29-8 be amended to read as follows:

22 36-29-8. ~~There is created an~~ The board shall appoint an athletic training committee, ~~which~~
23 ~~shall be comprised~~ composed of three residents of this state who are licensed to practice athletic
24 training in the state, one of ~~which~~ whom shall be a registered physical therapist. This committee

1 shall meet at least annually or as deemed necessary to conduct business. The committee shall
2 assist the Board of Medical and Osteopathic Examiners in conducting exams and shall assist the
3 board in all matters pertaining to the licensure, practice and discipline of those licensed to
4 practice athletic training in this state and the establishment of rules ~~and regulations~~ pertaining
5 to athletic training. ~~The South Dakota Athletic Trainers' Association shall nominate two people~~
6 ~~for each vacancy at least six months prior to the vacancy.~~ Each person appointed to the
7 committee after the initial members shall serve for a period of three years. ~~The board shall fill~~
8 ~~the vacancy from a list of nominees presented by the South Dakota Athletic Trainers'~~
9 ~~Association. In the event~~ No committee member may be appointed to more than three
10 consecutive full terms. If a vacancy arises due to death, retirement, or removal from the state,
11 ~~such~~ the vacancy shall be filled in the same manner as original appointments. The member shall
12 serve the remainder of the unexpired term. The appointment to an unexpired term is not
13 considered a full term.

14 Section 69. That § 36-29-19 be amended to read as follows:

15 36-29-19. The proceedings for cancellation, revocation, or suspension of a license may be
16 initiated when the Board of Medical and Osteopathic Examiners has written information that
17 any person may have been guilty of any misconduct pursuant to § 36-29-18 or is guilty of ~~gross~~
18 incompetence or unprofessional or dishonorable conduct.

19 Section 70. That § 36-31-2 be amended to read as follows:

20 36-31-2. ~~There is hereby established an~~ The board shall appoint an occupational therapy
21 committee ~~consisting~~ composed of three registered occupational therapists or two registered
22 occupational therapists and one certified occupational therapy assistant, ~~who~~. The committee
23 shall assist the Board of Examiners in approving qualifications of persons applying for a license
24 to practice occupational therapy in South Dakota, or the promulgation of rules pertaining to

1 occupational therapy, including guidelines for continuing competency. ~~Committee appointments~~
2 ~~shall be made within six months of July 1, 1986.~~ The committee shall meet a minimum of two
3 times per year. ~~The South Dakota occupational therapy association may at a regular or special~~
4 ~~meeting held within six months prior to the existence of any vacancy on the committee,~~
5 ~~nominate two persons for each vacancy on the committee.~~ All persons appointed to ~~such the~~
6 board after the first members shall serve for a period of three years. ~~The Board of Examiners~~
7 ~~may select from the list of nominees presented to it, as certified by the secretary of the~~
8 ~~association, persons to serve on such committee. Any~~ No member may serve more than three
9 consecutive full terms. Each person nominated to serve on such committee shall have the
10 following qualifications:

- 11 (1) ~~They~~ The person shall be ~~residents~~ a resident of South Dakota;
12 (2) ~~They~~ The person shall be licensed to practice occupational therapy in South Dakota;
13 and
14 (3) ~~They~~ The person shall have practiced occupational therapy a minimum of three years.

15 If any vacancy arises on ~~such the~~ committee ~~by reason of death, retirement, removal from~~
16 ~~this state, or otherwise of any member serving on such committee, such, the~~ vacancy shall be
17 filled in the same manner as original appointments ~~thereto are made and the term of the.~~ The
18 member ~~chosen to fill a vacancy shall be for~~ serve the remainder of the unexpired term ~~of the~~
19 ~~committee member he is replacing. The appointment to an unexpired term is not considered a~~
20 full term.

21 Section 71. That § 36-31-15 be amended to read as follows:

22 36-31-15. A proceeding for cancellation, revocation, or suspension of a license may be
23 initiated if the board has written information that any person may have been guilty of any
24 misconduct pursuant to § 36-31-14, or is guilty of ~~gross~~ incompetence or unprofessional or

dishonorable conduct.

Section 72. That § 36-32-2 be amended to read as follows:

36-32-2. ~~There is hereby created the~~ The South Dakota Board of Counselor Examiners,
~~which shall consist of seven~~ consists of nine members, ~~one of whom shall be a lay member~~
~~representing consumers of the services regulated by the board, one of whom shall be a counselor~~
~~educator, one of whom shall be a licensed marriage and family therapist, one of whom shall be~~
~~a licensed professional counselor--mental health, and two of whom shall be from any three of~~
~~whom shall be lay members and six of whom shall be professionals actively engaged in~~
~~professional counseling or marriage and family therapy and broadly representing a cross section~~
~~of the licensed disciplines governed by this board, all appointed by the Governor. All members~~
~~with the exception of the lay member and the counselor educator shall be engaged in rendering~~
~~counseling services. The Governor shall appoint all of the members.~~

Section 73. That § 36-32-3 be amended to read as follows:

36-32-3. In order to be eligible for appointment to the board as a professional member, a
person, ~~other than the lay member~~, shall be licensed pursuant to this chapter or chapter 36-33.
~~However, the initial appointees must meet the qualifications for licensure and shall become~~
~~licensed professional counselors upon their appointment as members of the board.~~

Section 74. That § 36-32-4 be amended to read as follows:

36-32-4. Appointments to the board shall be for terms of three years, ~~beginning and begin~~
on July first. No member of the board may serve for more than three successive full terms;
~~appointment of a member. Appointment to an unexpired term shall be~~ is not considered as a full
term.

Section 75. That § 36-33-3 be repealed.

~~36-33-3. The board shall appoint a Marriage and Family Therapists' Advisory Committee~~

1 composed of five members. Four of the members shall be clinical members of the American
2 Association for Marriage and Family Therapy and the other member shall be an individual
3 representing the public who is unaffiliated with the profession.

4 — Committee members shall be selected from a list of nominees submitted by the South
5 Dakota Association for Marriage and Family Therapy. Each committee member shall serve a
6 term of three years, except initial appointees whose terms shall be staggered so that no more
7 than two members' terms expire in any one year. If a vacancy occurs, the board shall appoint a
8 person to fill the unexpired term.

9 — The advisory committee shall assist the board in evaluating the qualifications of applicants
10 for licensure and reviewing the examination results of applicants. The committee shall also
11 make recommendations to the board regarding rules promulgated pursuant to this chapter.

12 Section 76. That § 36-34-2 be amended to read as follows:

13 36-34-2. ~~There is hereby created the~~ The South Dakota Certification Board for Alcohol and
14 Drug Professionals that consists of nine members, three of whom shall be lay members and six
15 of whom shall be professionals certified pursuant to this chapter. Each professional member
16 shall be active within the chemical dependency profession and broadly represent a cross section
17 of the profession of chemical dependency counseling and prevention services. ~~One member~~
18 ~~shall be a lay member and resident of the state; one member shall be an educator from an~~
19 ~~addiction studies postsecondary education program; four members shall be certified chemical~~
20 ~~dependency counselors in active practice within the state and broadly representing a cross~~
21 ~~section of the profession of chemical dependency counseling; one member shall be a certified~~
22 ~~prevention specialist; one member shall be an attorney licensed to practice law in the State of~~
23 ~~South Dakota; and one member shall be a certified practitioner who is an enrolled member of~~
24 ~~a tribe.~~ This board replaces the functions previously performed by the South Dakota Chemical

1 Dependency Counselor Certification Board, a private nonprofit entity doing business as the
2 Certification Board for Alcohol and Drug Professionals.

3 Section 77. That § 36-34-3 be amended to read as follows:

4 36-34-3. The Governor shall appoint the members to the board. ~~Initial appointments to the~~
5 ~~board shall be staggered for terms of one, two, and three years, with three members appointed~~
6 ~~for one year, three members appointed for two years, and three members appointed for three~~
7 ~~years. Thereafter, appointments shall be for terms of three years beginning which shall begin~~
8 ~~on the first day of July. Any board member appointed prior to July 1, 2005, shall complete the~~
9 ~~member's unexpired term. Thereafter, appointment shall be for a term of three years beginning~~
10 ~~upon expiration of the term.~~

11 Section 78. That § 36-34-4 be amended to read as follows:

12 36-34-4. The Governor may remove any member of the board for cause. If there is a vacancy
13 on the board ~~caused by the death, resignation, removal from the state of any member, or for any~~
14 ~~other reason~~, the Governor shall appoint a new member to serve the unexpired term. No member
15 of the board may serve for more than ~~two~~ three successive full terms. The appointment to an
16 unexpired term is not considered a full term.

17 Section 79. The effective date of sections 11, 13, and 15 of this Act is December 30, 2006.

18 Section 80. The effective date of sections 31, 33, and 35 of this Act is September 30, 2006.

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

992L0758

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1220** - 02/16/2005

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Representatives Rhoden, Dykstra, Gillespie, Hargens, and Michels and
Senators Bogue, Hanson (Gary), Koskan, Moore, and Schoenbeck

1 FOR AN ACT ENTITLED, An Act to revise the calculation of state aid to general education
2 and appropriate money therefor.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. There is hereby appropriated from the state general fund, after the transfer of
5 earnings from the education enhancement trust fund created in Article XII, section 6 of the
6 South Dakota Constitution, the sum of two million seven hundred fifty-eight thousand seven
7 hundred seventy-one dollars (\$2,758,771), or so much thereof as may be necessary, to the
8 Department of Education for distribution through the foundation formula in chapter 13-13.

9 Section 2. That § 13-13-10.1 be amended to read as follows:

10 13-13-10.1. Terms used in this chapter mean:

11 (1) "Average daily membership," the average number of resident and nonresident
12 kindergarten through twelfth grade pupils enrolled in all schools operated by the
13 school district during the previous regular school year, minus average number of
14 pupils for whom the district receives tuition, except pupils described in subdivision



1 (1A) and pupils for whom tuition is being paid pursuant to § 13-28-42 and plus the
2 average number of pupils for whom the district pays tuition;

3 (1A) Nonresident students who are in the care and custody of the Department of Social
4 Services, the Unified Judicial System, the Department of Corrections, or other state
5 agencies and are attending a public school may be included in the average daily
6 membership of the receiving district when enrolled in the receiving district. When
7 counting a student who meets these criteria in its general enrollment average daily
8 membership, the receiving district may begin the enrollment on the first day of
9 attendance. The district of residence prior to the custodial transfer may not include
10 students who meet these criteria in its general enrollment average daily membership
11 after the student ceases to attend school in the resident district;

12 (2) "Adjusted average daily membership," calculated as follows:

13 (a) For districts with an average daily membership of two hundred or less,
14 multiply 1.2 times the average daily membership;

15 (b) For districts with an average daily membership of less than six hundred, but
16 greater than two hundred, raise the average daily membership to the 0.8293
17 power and multiply the result times 2.98;

18 (c) For districts with an average daily membership of six hundred or more,
19 multiply 1.0 times their average daily membership;

20 (3) "Index factor," is the annual percentage change in the consumer price index for urban
21 wage earners and clerical workers as computed by the Bureau of Labor Statistics of
22 the United States Department of Labor for the year before the year immediately
23 preceding the year of adjustment or three percent, whichever is less;

24 (4) "Per student allocation," for school fiscal year ~~2005 is \$4,086.56~~ 2006 is \$4,235.71.

1 Each school fiscal year thereafter, the per student allocation is the previous fiscal
2 year's per student allocation increased by the index factor;

3 (5) "Local need," the per student allocation multiplied by the adjusted average daily
4 membership;

5 (6) "Local effort," the amount of ad valorem taxes generated in a school fiscal year by
6 applying the levies established pursuant to § 10-12-42;

7 (7) "General fund balance," the unreserved fund balance of the general fund, less general
8 fund exclusions plus, beginning with transfers made in fiscal year 2001, any transfers
9 out of the general fund for the previous school fiscal year;

10 (8) "General fund balance percentage," is a school district's general fund balance divided
11 by the school district's total general fund expenditures for the previous school fiscal
12 year, the quotient expressed as a percent;

13 (9) "General fund base percentage," is the general fund balance percentage as of June 30,
14 2000. However, the general fund base percentage can never increase and can never
15 be less than twenty percent;

16 (10) "Allowable general fund balance," the fund base percentage multiplied by the
17 district's general fund expenditures in the previous school fiscal year;

18 (11) "Imputed interest rate," the average prime rate for the preceding fiscal year minus 2.5
19 percentage points;

20 (12) "General fund exclusions," revenue a school district has received from the imposition
21 of the excess tax levy pursuant to § 10-12-43; revenue a school district has received
22 from gifts, contributions, grants, or donations; revenue a school district has received
23 under the provisions of §§ 13-6-92 to 13-6-96, inclusive; and any revenue in the
24 general fund set aside for a noninsurable judgment.

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

744L0744

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1226 - 02/25/2005

This bill has been extensively amended (houghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Representatives Bradford, Hargens, Valandra, and Van Norman and Senators Moore, Adelstein, Kooistra, and Olson (Ed)

1 FOR AN ACT ENTITLED, An Act to establish certain notice provisions related to the custody
2 and placement of Indian children.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 26-7A-15 be amended to read as follows:

5 26-7A-15. The officer or party who takes a child into temporary custody, with or without
6 a court order, except under a court order issued during a noticed hearing after an action has been
7 commenced, shall immediately, without unnecessary delay in keeping with the circumstances,
8 inform the child's parents, guardian, or custodian of the temporary custody and of the right to
9 a prompt hearing by the court to determine whether temporary custody should be continued. If
10 the child's parents, guardian, or custodian cannot be located after reasonable inquiry, the officer
11 or party taking temporary custody of the child shall report that fact and the circumstances
12 immediately to the state's attorney. The state's attorney shall notify the child's parents, guardian,
13 or custodian, without unnecessary delay, of the time, date, and place of the temporary custody
14 hearing. If the temporary custody hearing concerns an apparent abused or neglected Indian child,



1 the state's attorney or Department of Social Services shall make reasonable efforts to inform the
2 Indian custodian and Indian child's tribe, if known, of the time, date, and place of the temporary
3 custody hearing. The information regarding the temporary custody hearing may be provided to
4 the Indian custodian or Indian child's tribe orally or in writing, including by telephone or
5 facsimile. The hearing shall be held within forty-eight hours if it concerns any apparent abused
6 or neglected child or if it concerns any apparent delinquent child pursuant to 26-8C-3 or within
7 twenty-four hours if it concerns any apparent child in need of supervision pursuant to § 26-8B-3,
8 excluding Saturdays, Sundays, and court holidays, after taking the child into temporary custody,
9 unless extended by order of the court. Failure to notify the child's parents, guardian, or
10 custodian, or to inform the Indian custodian or the Indian child's tribe, of the temporary custody
11 hearing is not cause for delay of the hearing if the child is represented by an attorney at the
12 hearing. As used in this section, the terms, Indian child, Indian custodian, and Indian child's
13 tribe, are defined as in 25 U.S.C. § 1903, as amended to January 1, 2005.

14 Section 2. That chapter 26-7A be amended by adding thereto a NEW SECTION to read as
15 follows:

16 In any proceeding under chapters 26-7A, 26-8A, or 26-8B, to which the terms of the "Indian
17 Child Welfare Act", 25 U.S.C. sec. 1901, et seq., as amended to January 1, 2005, apply:

- 18 (1) If the state's attorney knows or has reason to know that an Indian child is involved,
19 the state's attorney shall notify the parent or Indian custodian and the Indian child's
20 tribe, if known, of the pending proceedings and of their right of intervention. The
21 notice shall be sent by registered mail with return receipt requested but may be
22 personally served on any person entitled herein to receive notice in lieu of mail
23 service. If the identity or location of the parent or Indian custodian and the Indian
24 child's tribe cannot be determined, the notice shall be given to the United States

Secretary of the Interior and to the area director for the Bureau of Indian Affairs in like manner, who have fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe;

(2) The state's attorney shall provide such notice prior to any adjudicatory hearing and prior to any final dispositional hearing in which the state seeks termination of parental rights of one or both parents or termination of the rights of the Indian custodian. However, upon intervention, the parent, tribe, or Indian custodian is entitled to notice in the manner authorized by the Rules of Civil Procedure and chapters 26-7A and 26-8A;

(3) The court shall establish in the record that a notice of the proceeding was provided as required in this section. No foster care placement or termination of parental rights proceedings may be held until at least ten days after receipt of the foregoing notice by the parent or Indian custodian and the tribe or the Secretary. The parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for the proceeding;

(4) The notice required in this section shall be written in clear and understandable language and shall include the following:

(a) The name and tribal affiliation, if known, of the Indian child;

(b) A copy of the petition unless the notice is served by publication pursuant to 26-7A-48;

(c) The name and address of the state's attorney;

(d) A statement listing the rights of the Indian child's parents, Indian custodians, and tribes, under the Indian Child Welfare Act, 25 U.S.C. § 1901, et. seq., as amended to January 1, 2005, including:

- 1 (i) The right of a Indian custodian or the Indian child's tribe to intervene
2 in a proceeding for the foster care placement of, or termination of
3 parental rights to, the Indian child;
4 (ii) The right to file a motion to transfer the proceeding to the tribal court
5 of the Indian child's tribe;
6 (iii) The right to be granted up to twenty days from the receipt of the notice
7 to prepare for the proceeding; and
8 (iv) The right to request that the court grant further extensions of time;
9 (e) If the petition alleges the child to be an abused or neglected child, a statement
10 that the termination of parental or custodial rights is a possible remedy under
11 the proceedings;
12 (f) A statement that if the Indian child's parents or Indian custodian are unable to
13 afford counsel, counsel may be appointed to represent them;
14 (g) A statement in the notice to the tribe that the information contained in the
15 notice, petition, pleading, or other documents are confidential; and
16 (h) The location, mailing address and telephone number of the court.

17 The original or a copy of each notice sent pursuant to this section shall be filed with
18 the court together with any return receipts or other proof of service;

- 19 (5) Each party may examine all reports or other documents filed with the court upon
20 which any decision with respect to such action may be based.

21 As used in this section, the terms, Indian, Indian child, parent, Indian custodian, tribe, Indian
22 child's tribe, foster care placement, termination of parental rights, and secretary, are defined as
23 in 25 U.S.C. § 1903, as amended to January 1, 2005.

24 Section 3. That § 26-7A-55 be amended to read as follows:

26-7A-55. If all necessary parties admit the allegations contained in the petition and the court accepts the admissions, the court may find, conclude and make a decision as to adjudication of the child under the applicable provisions of chapter 26-8A, 26-8B, or 26-8C. The court may then proceed with the dispositional phase of the proceedings without conducting a formal adjudicatory hearing on the petition with the concurrence of all parties. However, at the request of any party or if required by the court, the court shall set a later time and date for the dispositional hearing. The court shall then determine interim dispositional arrangements concerning the child and the parties.

If the petition is not admitted by all necessary parties, including the child, if appropriate, or if the petition is denied by any necessary party or the child, if appropriate, the court shall proceed with the adjudicatory hearing on the petition, if notice has been given as required by section 2 of this Act, if applicable, or schedule the adjudicatory hearing for a later time and date.

If the advisory hearing is adjourned and continued or if the advisory hearing is completed and the adjudicatory hearing on the petition is scheduled for a later time and date, the court shall make an interim order regarding temporary custody of the child as determined by the court.

Section 4. The form of the notice provided for in section 2 of this Act is as follows:

STATE OF SOUTH DAKOTA)	IN CIRCUIT COURT
) ss	
COUNTY OF _____)	____JUDICIAL CIRCUIT
THE PEOPLE OF THE STATE OF)	Juv. No. _____
SOUTH DAKOTA IN THE INTEREST)	
OF _____,)	NOTICE TO PARENT, CUSTODIAN,
MINOR CHILD(REN), AND)	OR INDIAN TRIBE OF CHILD CUSTODY
CONCERNING _____,)	PROCEEDINGS (ICWA)
_____ ,)	

23 4. You may have the right, as the parent(s), Indian custodian, or Indian tribe, to have,
24 upon request, 20 additional days to prepare for the hearing. If you desire additional

time to prepare for the hearing, you should contact the court using the information provided in paragraph 7 below.

5. You may have the right, as (a) parent(s), Indian custodian, or Indian tribe, to petition this Court for transfer of the proceeding to tribal court.

6. The Petitioner in this action is the State of South Dakota, and the name and address of the attorney for the Petitioner is: _____, State's Attorney for _____ County, _____, South Dakota.

7. The Court's phone number is _____. The Court's mailing address is _____. Please report to the Court or to the State all information you have as to the status of the above-named child(ren), including the eligibility/membership of the child(ren) or the parent(s) in any Indian tribe.

8. If you are the child(ren)'s parent, it is possible that your parental rights will be terminated in this proceeding. If your parental rights are terminated in this proceeding, you will no longer be able to exercise parental, custodial or any other rights with regard to the child(ren).

9. Since custody proceedings are conducted on a confidential basis, you are requested to keep confidential all information contained in this Notice.

Dated this _____ day of _____, 20 _____.

State's Attorney

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

400L0779

SENATE AGRICULTURE AND NATURAL RESOURCES

COMMITTEE ENGROSSED NO. **HB 1252 -**

02/24/2005

Introduced by: The Committee on Agriculture and Natural Resources at the request of the
Governor

1 FOR AN ACT ENTITLED, An Act to approve the state prairie dog management plan and to
2 require that amendments to the plan be approved by the Legislature.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. The state prairie dog plan, which has been established by the secretary of
5 agriculture and the secretary of game, fish and parks and filed with the secretary of state on
6 January 28, 2005, is hereby approved in accordance with §§ 34A-8-7 and 34A-8A-8.

7 Section 2. That chapter 34A-8A be amended by adding thereto a NEW SECTION to read
8 as follows:

9 The Department of Agriculture and the Department of Game, Fish and Parks shall submit
10 any changes or amendments to any plan approved by the Legislature pursuant to § 34A-8A-8
11 for legislative approval before the changes or amendments may take effect.



State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

400L0782

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1260** - 02/28/2005

This bill has been extensively amended (houghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: The Committee on State Affairs at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to create the South Dakota Energy Infrastructure Authority
2 and to declare an emergency.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. Terms used in this Act mean as follows:

5 (1) "Authority," the South Dakota Energy Infrastructure Authority created pursuant to
6 this Act;

7 (2) "Board," the board of directors of the authority.

8 Section 2. The South Dakota Energy Infrastructure Authority is created to diversify and
9 expand the state's economy by developing in this state the energy production facilities and the
10 energy transmission facilities necessary to produce and transport energy to markets within the
11 state and outside of the state.

12 Section 3. The authority may provide for the financing, construction, development,
13 maintenance, and operation of new or upgraded energy transmission facilities. The authority
14 may own, lease, or rent such facilities. The authority may enter into partnerships with public and
15 private entities to develop and operate such facilities.



1 Section 4. If the authority becomes the owner or partial owner of any energy transmission
2 facility, the authority shall divest itself of ownership as soon as economically practical.
3 Recovery by the authority of its net investment in the energy production facility or energy
4 transmission facility is deemed to be economically practical.

5 Section 5. In order to finance energy transmission facilities authorized pursuant to this Act,
6 the authority may issue and have outstanding bonds to finance such facilities in an amount not
7 to exceed one billion dollars. However, no bonds may be issued until the issuance of the bonds
8 is specifically approved by an act of the Legislature. The authority shall have contracts sufficient
9 to justify the issuance of bonds.

10 Section 6. The authority shall:

- 11 (1) Meet with any interested owner of transmission lines in South Dakota and any
12 interested generator and distributor of electricity to consumers in South Dakota by
13 August first each year to understand the generation of electricity in South Dakota and
14 the transmission enhancements needed for the transmission of electricity to, from,
15 and within South Dakota, and to analyze how the authority could proactively assist
16 in developing the generation and transmission infrastructure;
- 17 (2) Report its findings and make recommendations to the Governor, the Legislature, and
18 the South Dakota congressional delegation by December first of each year concerning
19 what the private sector, the state, and the federal government can do to create and
20 enhance the generation of electricity in South Dakota and the transmission of
21 electricity to, from, and within South Dakota. The report due December 1, 2005, shall
22 address and quantify market opportunities for the development, use in-state, and
23 export of South Dakota's enormous wind power resource;
- 24 (3) Annually evaluate state laws and rules affecting electric generation and electric

1 transmission and make recommendations to the Governor and the Legislature for
2 improvements by December first of each year;

3 (4) Annually evaluate federal laws and rules affecting electric generation and electric
4 transmission and make recommendations to the South Dakota congressional
5 delegation for improvements by December first of each year;

6 (5) Identify opportunities where owners of transmission lines in South Dakota and
7 generators and distributors of electricity to consumers in South Dakota can cooperate
8 to improve and increase electric transmission in South Dakota and communicate
9 those opportunities to owners, generators, and distributors of electricity in South
10 Dakota;

11 (6) Assist any entity that wants to build new or upgrade existing electric transmission
12 facilities to, from, and within South Dakota by helping the entity develop a business
13 plan and identify financing options; and

14 (7) Assist other state transmission authorities and any federal or regional entity wanting
15 to build new or upgrade existing transmission facilities to deliver electricity to, from,
16 and within South Dakota.

17 Section 7. There is hereby appropriated from the state general fund the sum of five hundred
18 thousand dollars (\$500,000), or so much thereof as may be necessary, to the authority created
19 pursuant to this Act.

20 Section 8. The director of the authority shall approve vouchers and the state auditor shall
21 draw warrants to pay expenditures authorized by this Act.

22 Section 9. Any amounts appropriated in this Act not lawfully expended or obligated by
23 June 30, 2007, shall revert in accordance with § 4-8-21.

24 Section 10. The governing and administrative powers of the authority are vested in its board

1 of directors consisting of five members. The Governor shall appoint the directors, with the
2 advice and consent of the Senate. Not all members of the board may be of the same political
3 party. The terms of the members of the board may not exceed six years. The terms of the initial
4 board of directors shall be staggered by the drawing of lots so that not more than two of the
5 director's terms shall end at the same time. Members of the board may serve more than one term.

6 Section 11. The Governor may remove any member of the board for cause, including
7 incompetence, neglect of duty, or malfeasance in office.

8 Section 12. Members of the board shall receive compensation for the performance of their
9 duties as established by the Legislature in accordance with § 4-7-10.4 from the funds of the
10 authority. Members may be reimbursed at rates established by the Bureau of Personnel for
11 necessary expenses, including travel and lodging expenses, incurred in connection with the
12 performance of their duties as members.

13 Section 13. Each member of the board shall, before entering upon the duties of office, take
14 and subscribe the constitutional oath of office.

15 Section 14. The board may appoint an executive director. The executive director may not
16 be a member of the board. The executive director shall hold office at the discretion of the board.
17 The executive director shall be the chief administrative and operational officer of the authority,
18 shall direct and supervise its administrative affairs and general management, shall perform such
19 other duties as may be prescribed from time to time by the board, and shall receive
20 compensation fixed by the board. The executive director shall attend all meetings of the board.
21 However, no action of the board or the authority is invalid on account of the absence of the
22 executive director from a meeting. The board may engage the services of such other agents and
23 employees as they deem appropriate, including attorneys, appraisers, scientists, researchers,
24 engineers, accountants, credit analysts, and other consultants, and may prescribe their duties and

1 fix their compensation.

2 Section 15. The board shall meet on the call of the chair, upon the written request of four
3 members of the board, or upon the request of the executive director.

4 Section 16. A majority of the members of the board constitute a quorum for the transaction
5 of business. All official acts of the authority shall require the affirmative vote of at least four
6 members of the board at a meeting of the board at which the members casting those affirmative
7 votes are present.

8 Section 17. Notwithstanding any other law to the contrary it is not a conflict of interest for
9 a trustee, director, officer, or employee of any financial institution, investment banking firm,
10 brokerage firm, commercial bank or trust company, architectural firm, utility company,
11 engineering firm, mining firm, insurance company, energy company, or any other firm, person,
12 or corporation to serve as a member of the authority, if the trustee, director, officer, or employee
13 abstains from deliberation, action, and vote by the authority in each instance where the business
14 affiliation of any such trustee, director, officer, or employee is involved.

15 Section 18. Each meeting of the authority for any purpose whatsoever shall be open to the
16 public as required by chapter 1-25. Notice of meetings shall be as provided in the bylaws of the
17 authority. Resolutions need not be published or posted.

18 Section 19. The executive director or other person designated by the authority shall keep a
19 record of the proceedings thereof and shall be custodian of all books, documents, and papers
20 filed with the authority, the minute books or journal of the authority and its official seal. The
21 executive director or other person designated by the authority may cause copies to be made of
22 all minutes and other records and documents of the authority and may give certificates under
23 the official seal of the authority to the effect that such copies are true copies and all persons
24 dealing with the authority may rely on such certificates.

1 Section 20. The authority shall establish and collect fees, schedules of fees, rentals and other
2 charges for the use of the transmission facilities of the authority as the board may determine, and
3 may borrow funds for the execution of the purposes of the authority, and mortgage and pledge
4 any lease or leases granted, assigned, or subleased by the authority.

5 Section 21. The authority may:

- 6 (1) Have perpetual succession as a body politic and corporate exercising essential public
7 functions;
- 8 (2) Sue and be sued in its own name;
- 9 (3) Have an official seal and alter the seal at will;
- 10 (4) Maintain an office at such places within the state as the authority may designate;
- 11 (5) Make and execute contracts and all other instruments necessary or convenient for the
12 performance of its duties and the exercise of its powers and functions under this Act;
- 13 (6) Employ fiscal consultants, engineers, attorneys, and such other consultants and
14 employees as may be required and contract with agencies of the state to provide staff
15 and support services;
- 16 (7) Procure insurance against any loss in connection with its property and other assets,
17 including loans and notes in such amounts and from such insurers as it may deem
18 advisable;
- 19 (8) Borrow money and issue bonds as provided by this Act;
- 20 (9) Procure insurance, letters of credit, guarantees, or other credit enhancement
21 arrangements from any public or private entities, including any department, agency,
22 or instrumentality of the United States or the state, for payment of all or any portion
23 of any bonds issued by the authority, including the power to pay premiums, fees, or
24 other charges on any such insurance, letters of credit, guarantees, or credit

1 arrangements;

2 (10) Receive and accept from any source financial aid or contributions of moneys,
3 property, labor, or other things of value to be held, used, and applied to carry out the
4 purposes of this Act subject to the conditions upon which the grants or contributions
5 are made, including, gifts or grants from any department, agency, or instrumentality
6 of the United States for any purpose consistent with the provisions of this Act;

7 (11) To the extent permitted under its contract with the holders of bonds of the authority,
8 consent to any modification with respect to the rate of interest, time, and payment of
9 any installment of principal or interest, or any other term of any contract, loan, loan
10 note, loan note commitment, contract, lease, or agreement of any kind to which the
11 authority is a party;

12 (12) To make loans and grants to, and enter into financing agreements with, any
13 governmental agency or any person for the costs incurred in connection with the
14 development, construction, acquisition, improvement, maintenance, operation, or
15 decommissioning of electric transmission facilities, or for the maintenance of the
16 physical or structural integrity of real or personal property incorporated or which may
17 be incorporated into such facilities, in accordance with a written agreement between
18 the authority and such governmental agency or person. However, no such loan or
19 grant may exceed the total cost of such facilities as determined by the governmental
20 agency or person and approved by the authority;

21 (13) Cooperate with and exchange services, personnel, and information with any
22 governmental agency;

23 (14) Enter into agreements for management on behalf of the authority of any of its
24 properties upon such terms and conditions as may be mutually agreeable;

- 1 (15) Sell, exchange, lease, donate, and convey any of its properties whenever the authority
2 finds such action to be in furtherance of the purposes for which it was organized;
- 3 (16) Acquire, hold, lease, and dispose of real and personal property, and construct,
4 develop, maintain, operate, and decommission electric transmission facilities;
- 5 (17) Indemnify any person or governmental agency for such reasonable risks as the
6 authority deems advisable if the indemnification is a condition of a grant, gift, or
7 donation to the authority. However, any such obligation to indemnify may only be
8 paid from insurance or from revenues of the authority, and such obligation does not
9 constitute a debt or obligation of the State of South Dakota;
- 10 (18) Do any act and execute any instrument which in the authority's judgment is necessary
11 or convenient to the exercise of the powers granted by this Act or reasonably implied
12 from it;
- 13 (19) After consultation with the Public Utilities Commission and any other relevant
14 governmental authority, establish and charge reasonable fees, rates, tariffs, or other
15 charges for the use of all facilities administered by the authority and for all services
16 rendered by it;
- 17 (20) Investigate, plan, prioritize, and establish corridors for the transmission of electricity;
18 and
- 19 (21) Acquire by condemnation, in accordance with chapter 21-35, within the state any
20 properties necessary or useful for the authority's purposes. However, the authority
21 may not condemn any existing facilities.

22 Section 22. The authority may invest any funds not needed for immediate investment in the
23 following:

- 24 (1) Bonds, notes, certificates of indebtedness, treasury bills, or other securities

1 constituting direct obligations of, or obligations the principal of and interest on which
2 are fully guaranteed or insured by, the United States of America;

3 (2) Obligations issued by or obligations the principal of and interest on which are fully
4 guaranteed or insured by any agency or instrumentality of the United States of
5 America;

6 (3) Certificates of deposit or time deposits constituting direct obligations of any bank
7 which is a qualified public depository or any savings and loan association which is
8 a savings and loan depository under the Public Deposit Insurance Act pursuant to
9 chapter 4-6A, unless sufficient volume of such certificates is not available at
10 competitive interest rates. In that event, the authority may purchase noncollateralized
11 direct obligations of any bank or savings institution or holding company if such
12 institution or holding company is rated in the highest two quality categories by a
13 nationally recognized rating agency;

14 (4) Obligations of any solvent insurance company or other corporation or business entity
15 existing under the laws of the United States or any state thereof, if the obligation of
16 the insurance company or other corporation or business entity is rated in the two
17 highest classifications established by a standard rating service of insurance
18 companies or a nationally recognized rating agency;

19 (5) Short term discount obligations of the Federal National Mortgage Association;

20 (6) Obligations issued by any state of the United States or any political subdivision,
21 public instrumentality, or public authority of any state of the United States, which
22 obligations are not callable before the date the principal thereof will be required to
23 be paid and which obligations are fully secured as to both sufficiency and timely
24 payment by, and payable solely from, securities described in subdivision (1) and

1 which obligations are rated in the highest investment classification by at least two
2 standard rating services of such obligations.

3 Any securities may be purchased at the offering or market price thereof at the time of the
4 purchase. All securities so purchased shall mature or be redeemable on a date or dates prior to
5 the time when, in the judgment of the authority, the funds so invested will be required for
6 expenditure. The express judgment of the authority as to the time when any funds will be
7 required for expenditure or be redeemable is final and conclusive. Investment in any obligation
8 enumerated in this section may be made either directly or in the form of securities of, or other
9 interests in, an investment company registered under the Federal Investment Act of 1940, whose
10 shares are registered under the Federal Securities Act of 1933, and whose investments are
11 limited to these obligations.

12 Section 23. The authority may issue revenue bonds, notes, or other evidences of
13 indebtedness to pay the cost incurred in connection with developing, constructing, acquiring,
14 improving, maintaining, operating, and decommissioning electric transmission facilities. For
15 the purpose of evidencing the obligations of the authority to repay any money borrowed, the
16 authority may, pursuant to resolution, from time to time issue and dispose of its interest bearing
17 revenue bonds, notes, or other instruments and may also from time to time issue and dispose of
18 such bonds, notes, or other instruments to refund, at maturity, at a redemption date or in advance
19 of either, any revenue bonds, notes, or other instruments pursuant to redemption provisions or
20 at any time before maturity. All such revenue bonds, notes, or other instruments shall be payable
21 solely from the revenues or income to be derived with respect to such facilities, from the leasing
22 or sale of such facilities, or from any other funds available to the authority for such purposes.
23 The revenue bonds, notes, or other instruments may bear such date or dates, may mature at such
24 time or times not exceeding forty years from their respective dates, may bear interest at such rate

1 or rates, may be in such form, may carry such registration privileges, may be executed in such
2 manner, may be payable at such place or places, may be made subject to redemption in such
3 manner and upon such terms, with or without premium as is stated on the face thereof, may be
4 authenticated in such manner, and may contain such terms and covenants as may be provided
5 by an applicable resolution.

6 Section 24. Any holder of any revenue bonds, notes, or other instruments issued by the
7 authority may bring suits at law or proceedings in equity to compel the performance and
8 observance by any corporation or person or by the authority or any of its agents or employees
9 of any contract or covenant made with the holders of such revenue bonds, notes, or other
10 instruments, to compel such corporation, person, the authority, and any of its agents or
11 employees to perform any duties required to be performed for the benefit of the holders of any
12 such revenue bonds, notes, or other instruments by the provision of the resolution authorizing
13 their issuance and to enjoin such corporation, person, the authority, and any of its agents or
14 employees from taking any action in conflict with any such contract or covenant.

15 Section 25. If the authority fails to pay the principal of or interest on any of the revenue
16 bonds or premium, if any, as the same become due, a civil action to compel payment may be
17 instituted in the appropriate circuit court by the holder or holders of the revenue bonds on which
18 such default of payment exists or by an indenture trustee acting on behalf of such holders.
19 Delivery of a summons and a copy of the complaint to the chair of the board constitutes
20 sufficient service to give the circuit court jurisdiction of the subject matter of such a suit and
21 jurisdiction over the authority and its officers named as defendants for the purpose of
22 compelling such payment.

23 Section 26. Notwithstanding the form and tenor of any such revenue bonds, notes, or other
24 instruments and in the absence of any express recital on the face of any such revenue bond, note,

1 or other instruments that it is non-negotiable, all such revenue bonds, notes, and other
2 instruments shall be negotiable instruments. Pending the preparation and execution of any such
3 revenue bonds, notes, or other instruments, temporary revenue bonds, notes, or instruments may
4 be issued as provided by resolution.

5 Section 27. To secure the payment of any or all of such revenue bonds, notes, or other
6 instruments, the revenues to be received by the authority from a lease agreement or loan
7 agreement shall be pledged, and, for the purpose of setting forth the covenants and undertakings
8 of the authority in connection with the issuance thereof and the issuance of any additional
9 revenue bonds, notes, or other instruments payable from such revenues, income, or other funds
10 to be derived from electric transmission facilities, the authority may execute and deliver a trust
11 agreement. A remedy for any breach or default of the terms of any such trust agreement by the
12 authority may be by mandamus proceedings in the appropriate circuit court to compel the
13 performance and compliance therewith, but the trust agreement may prescribe by whom or on
14 whose behalf the action may be instituted.

15 Section 28. The revenue bonds or notes shall be secured as provided in the authorizing
16 resolution which may, notwithstanding any other provision of this Act, include in addition to
17 any other security a specific pledge or assignment of and lien on or security interest in any or
18 all revenues or money of the authority from whatever source which may by law be used for debt
19 service purposes and a specific pledge or assignment of and lien on or security interest in any
20 funds or accounts established or provided for by resolution of the authority authorizing the
21 issuance of such revenue bonds, notes, or other instruments. Any pledge made by the authority
22 of revenues or other moneys received or to be received by the authority pursuant to an
23 agreement with a governmental agency relating to a project to pay revenue bonds, notes, or other
24 evidences of indebtedness of the authority shall be binding from the time the pledge is made.

1 Revenues and other moneys received or to be received by the authority pursuant to an agreement
2 with a governmental agency relating to a project so pledged to pay revenue bonds, notes, or
3 other evidences of indebtedness of the authority shall be held outside of the state treasury and
4 in the custody of the authority or a trustee or a depository appointed by the authority. Revenues
5 or other moneys received or to be received by the authority pursuant to an agreement with a
6 governmental agency relating to a project so pledged to pay revenue bonds, notes, or other
7 evidences of indebtedness of the authority and thereafter received by the authority or such
8 trustee or depository shall immediately be subject to the lien of the pledge without any physical
9 delivery thereof or further act, and the lien of any pledge shall be binding against all parties
10 having claims of any kind of tort, contract, or otherwise against the authority or the State of
11 South Dakota, irrespective of whether the parties have notice thereof. Neither the resolution nor
12 any other instrument by which a pledge is created need be filed or recorded except in the records
13 of the authority.

14 Section 29. The State of South Dakota pledges to and agrees with the holders of the revenue
15 bonds and notes of the authority issued pursuant to this Act that the state will not limit or
16 decrease the rights and powers vested in the authority by this Act so as to impair the terms of
17 any contract made by the authority with such holders or in any way impair the rights and
18 remedies of such holders until such revenue bonds, notes, or other instruments, together with
19 interest thereon, with interest on any unpaid installments of interest, and all costs and expenses
20 in connection with any action or proceedings by or on behalf of such holders, are fully met and
21 discharged. The authority may include these pledges and agreements of the state in any contract
22 with the holders of revenue bonds, notes, or other instruments issued pursuant to this section.

23 Section 30. Nothing in this Act may be construed to authorize the authority to create a debt
24 of the state within the meaning of the Constitution or statutes of South Dakota and all revenue

1 bonds, notes, other instruments and obligations issued by the authority pursuant to the
2 provisions of this Act are payable and shall state that they are payable solely from the funds
3 pledged for their payment in accordance with the resolution authorizing their issuance or in any
4 trust indenture or mortgage or deed of trust executed as security therefor. The state is not in any
5 event liable for the payment of the principal of or interest on any bonds, notes, instruments, or
6 obligations issued by the authority or for the performance of any pledge, mortgage, obligation,
7 or agreement of any kind whatsoever which may be undertaken by the authority. No breach of
8 any such pledge, mortgage, obligation, or agreement may impose any pecuniary liability upon
9 the state or any charge upon its general credit or against its taxing power.

10 Section 31. The state and all counties, municipalities, political subdivisions, public bodies,
11 public officers, banks, bankers, trust companies, savings banks and institutions, building and
12 loan associations, savings and loan associations, personal representatives, conservators, trustees,
13 and other fiduciaries may legally invest any debt service funds, money, or other funds belonging
14 to them or within their control in any bonds or notes issued pursuant to this Act.

15 Section 32. Any documentary material or data made or received by the authority for
16 purposes under this Act, to the extent that such material or data consists of trade secrets,
17 scientific or technical secrets, matters involving national security, or commercial or financial
18 information regarding the operation of a business, may not be considered public records, and
19 are exempt from disclosure. Any discussion or consideration of such information may be held
20 by the authority in executive session.

21 Section 33. The authority may acquire title to any electric transmission facility with respect
22 to which it exercises its authority.

23 Section 34. The authority may acquire by purchase, lease, gift, or otherwise any property or
24 rights to any property from any person or any governmental agency, whether improved for the

1 purposes of any prospective project or unimproved. The authority may also accept any donation
2 of funds for its purposes from any of those sources.

3 Section 35. The authority may acquire, develop, construct, improve, maintain, operate, and
4 decommission any electric transmission facilities, either under its own direction or through
5 collaboration with any approved applicant, or to acquire any project through purchase or
6 otherwise, using for that purpose the proceeds derived from its sale of revenue bonds, notes, or
7 other instruments or governmental loans, grants, or other funds and to hold title to those projects
8 in the name of the authority.

9 Section 36. The authority may enter into intergovernmental agreements with any
10 governmental agency.

11 Section 37. The authority may share employees with governmental agencies.

12 Section 38. The provisions of § 5-2-19 do not apply to real or personal property given to the
13 authority.

14 Section 39. The authority shall designate a qualified public depository as defined in § 4-6A-
15 1 as a depository of its money. Those depositories shall be designated only within the state and
16 upon condition that bonds approved as to form and surety by the authority and at least equal in
17 amount to the maximum sum expected to be on deposit at any one time shall be first given by
18 the depositories to the authority, those bonds to be conditioned for the safekeeping and prompt
19 repayment of the deposits. If any of the funds of the authority are deposited by the treasurer in
20 any such depository, the treasurer and the sureties on the treasurer's official bond are, to that
21 extent, exempt from liability for the loss of any of the deposited funds by reason of the failure,
22 bankruptcy, or any other act or default of the depository. However, the authority may accept
23 assignments of collateral by any depository of its funds to secure the deposits to the same extent
24 and conditioned in the same manner as assignments of collateral are permitted by law to secure

1 deposits of the funds consistent with the provisions of chapter 4-6A.

2 Section 40. The income of the authority and all land, improvements, equipment, fixtures,
3 or other property interests owned by the authority are exempt from all taxation in the State of
4 South Dakota. The authority is exempt from the provisions of chapter 47-31A.

5 Section 41. The authority is attached to the Department of Tourism and State Development
6 for reporting purposes. The authority shall submit such records, information, and reports in the
7 form and at such times as required by the secretary. However, the authority shall report at least
8 annually.

9 Section 42. Notwithstanding any other provisions of law, all funds received by the authority
10 shall be set forth in an informational budget as described in § 4-7-7.2.

11 Section 43. Whereas, this Act is necessary for the support of the state government and its
12 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in
13 full force and effect from and after its passage and approval.

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

400L0783

SENATE STATE AFFAIRS COMMITTEE ENGROSSED NO. **HB 1261** - 02/25/2005

Introduced by: The Committee on State Affairs at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to provide for the refund of the sales and contractor's excise
2 tax for significant capital investment and large job-creation projects.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 10-45B-1 be amended to read as follows:

5 10-45B-1. Terms used in this chapter mean:

6 (1) "Construction date," the first date earth is excavated for the purpose of constructing
7 a project;

8 (2) "Department," the Department of Revenue and Regulation;

9 (3) "Nameplate capacity," the number of kilowatts a power unit can produce according
10 to the nameplate assigned to the power unit generator by the manufacturer;

11 ~~(2)~~(4) "New agricultural processing facility," a new building or structure, the construction
12 of which is subject to contractors' excise tax pursuant to chapter 10-46A or 10-46B.

13 A new agricultural processing facility is any new building or structure constructed
14 for the initial or subsequent processing of any form of agricultural commodity,
15 product, or by-product. A new agricultural processing facility does not include any



1 building or structure constructed for raising or feeding of livestock or the expansion
2 of an existing agricultural processing facility;

3 ~~(3)~~(5) "Person," any individual, firm, copartnership, joint venture, association, limited
4 liability company, limited liability partnership, corporation, estate, trust, business
5 trust, receiver, unit of government, political subdivision of any state, rural electric
6 cooperative, consumers power district or any group or combination acting as a unit;

7 ~~(6)~~ "Power generation facility," a facility with one power unit that generates electricity
8 with a nameplate capacity of no less than five hundred megawatts;

9 ~~(4)~~(7) "Project," the construction of a new agricultural processing facility or a new business
10 facility at a single site;

11 ~~(5)~~(8) "Project cost," the amount paid in money, credits, property, or other money's worth
12 for a project;

13 ~~(6)~~(9) "Secretary," the secretary of the Department of Revenue and Regulation.

14 Section 2. That chapter 10-45B be amended by adding thereto a NEW SECTION to read as
15 follows:

16 For the purposes of this Act, the term, new business facility, means a new building or
17 structure, including a power generation facility, the construction of which is subject to the
18 contractor's excise tax pursuant to chapter 10-46A or 10-46B. A new business facility does not
19 include any building or structure:

20 (1) Used predominantly for the sale of products at retail, other than the sale of electricity
21 at retail, to individual consumers;

22 (2) Used predominantly for residential housing or transient lodging;

23 (3) Used predominantly to provide health care services; or

24 (4) That is not subject to ad valorem real property taxation or equivalent taxes measured

1 by gross receipts.

2 Section 3. That chapter 10-45B be amended by adding thereto a NEW SECTION to read as
3 follows:

4 As provided in this Act, any person holding a permit issued pursuant to § 10-45B-6 may
5 apply for and obtain a refund or credit for sales or use tax imposed and paid by such person
6 under the provisions of chapter 10-45 or 10-46 and contractors' excise taxes imposed and paid
7 under the provisions of chapter 10-46A or 10-46B on the project costs for a new business
8 facility.

9 Section 4. That § 10-45B-4 be amended to read as follows:

10 10-45B-4. The refund of taxes for a new agricultural processing facility pertains only to
11 project costs incurred and paid after April 1, 1997, and within thirty-six months of the approval
12 of the application required by § 10-45B-6. No refund may be made unless:

- 13 (1) The project cost exceeds the sum of four million five hundred thousand dollars; and
14 (2) The person applying for the refund obtains a permit from the secretary as set forth in
15 § 10-45B-6.

16 Section 5. That chapter 10-45B be amended by adding thereto a NEW SECTION to read as
17 follows:

18 The refund of taxes pursuant to section 3 of this Act pertains only to project costs incurred
19 and paid after February 1, 2005, up to and including thirty-six months from the construction date
20 if the project costs are sixty million dollars or less and after February 1, 2005, up to and
21 including seventy-two months from the construction date if the project costs are more than sixty
22 million dollars. There is no refund if the person applying for the refund does not obtain a permit
23 from the secretary as set forth in § 10- 45B-6.

24 Upon a showing of good cause, the time limits prescribed by this section may be extended

1 by the secretary for a period not to exceed twenty-four months.

2 Section 6. That chapter 10-45B be amended by adding thereto a NEW SECTION to read as
3 follows:

4 The amount of the tax refund for a new business facility shall be a percentage of the taxes
5 paid, as follows:

6 (1) For project costs of less than ten million dollars, there shall be no refund;

7 (2) For project costs of ten or more million dollars but less than twenty million dollars
8 there shall be a refund of twenty-five percent of the taxes paid;

9 (3) For project costs of twenty or more million dollars but less than sixty million dollars
10 there shall be a refund of fifty percent of the taxes paid;

11 (4) For project costs of sixty or more million dollars but less than six hundred million
12 dollars there shall be a refund of seventy-five percent of the taxes paid; and

13 (5) For project costs of six hundred million dollars and greater there shall be a refund of
14 ninety percent of the taxes paid.

15 Section 7. That § 10-45B-5 be amended to read as follows:

16 10-45B-5. If the project cost for a new agricultural processing facility exceeds four million
17 five hundred thousand dollars, the refund shall be one hundred percent of the taxes attributed
18 to the project cost.

19 Section 8. That § 10-45B-6 be amended to read as follows:

20 10-45B-6. Any person desiring to claim a refund pursuant to ~~§ 10-45B-2~~ this chapter shall
21 apply for a permit from the secretary at least thirty days prior to ~~commencement of the project~~
22 the construction date. The application for a permit shall be submitted on a form prescribed by
23 the secretary. A separate application shall be made and submitted for each project. Upon
24 approval of the application, the secretary shall issue a permit entitling the applicant to submit

1 refund claims as provided by §§ 10-45B-7 and 10-45B-8. Such permit or refund claims are not
2 assignable or transferable except as collateral or security pursuant to chapter 57A-9.

3 Section 9. That § 10-45B-8 be amended to read as follows:

4 10-45B-8. Any person issued a permit pursuant to this chapter shall submit a return to the
5 department no more frequently than on or before the last day of ~~the~~ each month and no less
6 frequently than on or before the last day of each month following each ~~quarterly period~~ calendar
7 quarter. The secretary shall determine and pay the amount of the tax refund within thirty days
8 of receipt of the return. ~~Ninety~~ Ninety-five percent of the amount of refund shall be paid to the
9 claimant in accordance with §§ 10-59-22 and 10-59-23, and ~~ten~~ five percent shall be withheld
10 by the department. No interest shall be paid on the refund amount. If electronic funds transfer
11 is available to the secretary, the secretary shall pay the refund by electronic funds transfer if
12 requested by the claimant.

13 Section 10. That § 10-45B-9 be amended to read as follows:

14 10-45B-9. The amounts withheld by the department in accordance with § 10-45B-8 shall be
15 retained until the project has been completed and the claimant has met all the conditions of § 10-
16 45B-4 or section 5 of this Act, at which time all sums retained shall be paid to claimant.

17 Section 11. That § 10-45B-10 be amended to read as follows:

18 10-45B-10. If any claim has been fraudulently presented or supported as to any item in the
19 claim, or if the claimant fails to meet all the conditions of ~~§ 10-45B-4~~ this chapter, then ~~such~~
20 the claim may be rejected in its entirety and all sums previously refunded to the claimant shall
21 constitute a debt to the state and a lien in favor of the state upon all property and rights to
22 property whether real or personal belonging to the claimant and may be recovered in an action
23 of debt.

24 Section 12. That chapter 10-45B be amended by adding thereto a NEW SECTION to read

1 as follows:

2 Any amount refunded pursuant to this Act for a project that is not completed within the time
3 frames prescribed by section 5 of this Act, including any extensions granted by the secretary,
4 shall be returned to the state without interest. Any refunded amounts not returned pursuant to
5 this section and all sums previously refunded to the claimant constitute a debt to the state and
6 a lien in favor of the state upon all property and rights to property whether real or personal
7 belonging to the claimant and may be recovered in an action of debt.

8 Section 13. That chapter 10-45B be amended by adding thereto a NEW SECTION to read
9 as follows:

10 Any person aggrieved by a decision of the secretary under this Act may, within thirty days
11 of receipt of written notice of the secretary's decision, make written application to the secretary
12 for a hearing to be conducted pursuant to chapter 1-26. Hearings are to be conducted and
13 appeals taken pursuant to the provisions of chapters 1-26 and 1-26D. A copy of the hearing
14 examiner's proposed decision, findings of fact, and conclusions of law shall be served on all
15 parties when furnished to the secretary. If the secretary, pursuant to chapter 1-26D, accepts the
16 final decision of the hearing examiner, no appeal from a final decision of the secretary upon any
17 additional tax to be paid may be taken unless any amount ordered paid by the secretary is paid
18 or a bond filed to insure payment of the amount. However, if the final decision of the secretary,
19 pursuant to chapter 1-26D, rejects or modifies the decision of the hearing examiner regarding
20 the amount due, an appeal may be taken without payment of the amount ordered to be paid and
21 without filing of a bond. If the secretary's decision is affirmed by the circuit court, no appeal
22 may be taken unless any amount ordered to be paid by the secretary is paid or a bond is filed to
23 insure payment of such amount.

24 Section 14. That § 10-46B-1 be amended to read as follows:

1 10-46B-1. There is imposed an excise tax upon the gross receipts of all prime contractors
2 and subcontractors engaged in realty improvement contracts for those persons subject to tax
3 under chapter 10-28, 10-33, 10-34, 10-35, 10-36, or 10-36A or any municipal utility or
4 telephone company subject to chapter 9-39, 9-41, 9-47, or 9-48 or any rural water system, at the
5 rate of two percent. Notwithstanding the provisions of this section, the tax imposed by this
6 chapter does not apply to the construction of a power generation facility as defined by section
7 1 of this Act.

8 Section 15. That § 10-46A-1.2 be amended to read as follows:

9 10-46A-1.2. The tax imposed upon contractors performing realty improvement contracts for
10 those persons subject to tax under chapter 10-28, 10-33, 10-34, 10-35, 10-36 or 10-36A or any
11 municipal utility or telephone company subject to chapter 9-39 or 9-41 or any rural water system
12 ~~shall~~ is not ~~be~~ subject to this chapter and ~~said~~ the contracts ~~shall be~~ are subject to the contractors'
13 excise tax imposed by chapter 10-46B. Notwithstanding the provisions of this section, the tax
14 imposed by this chapter applies to the construction of a power generation facility as defined by
15 section 1 of this Act.

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

347L0790

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1264** - 02/28/2005

Introduced by: Representatives Michels, Deadrick, Dykstra, Gillespie, Hargens, and Rhoden
and Senators Bogue, Hanson (Gary), and Moore

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the Constitutional
2 Revision Commission.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That section 3 of chapter 28 of the 2004 Session Laws be amended to read
5 as follows:

6 Section 3. The commission shall meet during the 2004~~and~~, 2005, and 2006 legislative
7 interims. The commission may hold meetings and hearings at times and places as it may
8 designate. It shall elect a chair, vice-chair, and such other officers from its membership as it
9 deems necessary.

10 Section 2. That section 6 of chapter 28 of the 2004 Session Laws be amended to read as
11 follows:

12 Section 6. The commission shall make an interim report to the 2006 Legislature
13 including any proposed amendments to the Constitution for the 2006 general election. The
14 commission shall make a final report it of its findings and recommendations to the 2007
15 Legislature in the form of proposed amendments to the Constitution ~~or the~~ for the 2008 general



1 election, proposed amendments to related statutes ~~to the Legislature at its regular session in~~
2 ~~2006~~ , or both. The content of any proposed constitutional amendment may only apply to the
3 Legislative article and may not affect the powers, duties, and responsibilities described in any
4 other article of the State Constitution.

State of South Dakota

EIGHTIETH LEGISLATIVE ASSEMBLY, 2005

400L0385

HOUSE ENGROSSED NO. **SB 66** - 02/25/2005

Introduced by: The Committee on Education at the request of the Department of Education

1 FOR AN ACT ENTITLED, An Act to provide certain options to school boards in
2 reorganization and to declare an emergency.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 13-6-10 be amended to read as follows:

5 13-6-10. If the school board or the voters of two or more districts or parts of districts express
6 a desire to consolidate their respective districts to create a new entity; or the school board or the
7 voters of an existing district express a desire to divide the district to create one or more new
8 entities; or the school board or the voters of an existing district express a desire to dissolve and
9 be annexed to an existing district, the school board may by resolution, or shall, if presented by
10 a petition signed by fifteen percent of the registered voters residing in the district, based upon
11 the total number of registered voters at the last preceding general election, develop a plan to
12 accomplish the desire expressed in the resolution or contained in the petition. If more than one
13 district is involved, their respective school boards shall act jointly in the preparation of the plan.
14 Within fifteen days after a petition is filed as provided in this section, the school district shall
15 acknowledge the receipt of the petition in writing to the person who filed the petition. Within
16 one hundred eighty days after the petition was filed, the school board shall develop the plan



1 required in this section and shall file the plan as required in § 13-6-17. The Department of
2 Education may grant two extensions of the filing deadline, not to exceed ninety days each.

3 The school board shall call conferences and hold hearings to develop the plan. The school
4 board may employ a consultant. If the school boards involved in the creation of a plan initiated
5 by a petitioner cannot agree on a single plan within the time allowed in this section, the
6 Secretary of Education shall submit a plan to the voters of each affected school board within
7 ninety days.

8 Section 2. Whereas, this Act is necessary for the immediate preservation of the public peace,
9 health, or safety, an emergency is hereby declared to exist, and this Act shall be in full force and
10 effect from and after its passage and approval.

State of South Dakota

EIGHTIETH SESSION LEGISLATIVE ASSEMBLY, 2005

327L0562

HOUSE ENGROSSED NO. **SB 214** - 02/25/2005

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Senators Peterson (Jim), Bartling, Duenwald, Greenfield, Hansen (Tom), Hanson (Gary), Hundstad, Kloucek, Koetzle, Moore, Nesselhuf, Smidt, and Sutton (Dan) and Representatives Dykstra, Boomgarden, Brunner, Davis, Deadrick, Dennert, Frost, Fryslie, Garnos, Gassman, Gillespie, Glover, Hackl, Halverson, Hargens, Hunhoff, Jensen, Klaudt, Koistinen, Kroger, Lange, Nelson, Novstrup, O'Brien, Olson (Ryan), Pederson (Gordon), Peters, Putnam, Rausch, Rave, Rhoden, Rounds, Schafer, Sebert, Sigdestad, Street, Tidemann, and Vehle

1 FOR AN ACT ENTITLED, An Act to provide taxation benefits for certain soybean and
2 biodiesel facilities.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 10-47B-4 be amended to read as follows:

5 10-47B-4. The fuel excise tax rates for the tax imposed by this chapter are as follows:

- 6 (1) Motor fuel (except ethanol blends, E85 and M85 blends, and aviation gasoline)--\$.22
7 per gallon;
- 8 (2) Special fuel (except jet fuel and biodiesel blend)--\$.22 per gallon;
- 9 (3) Ethanol blends--\$.20 per gallon;
- 10 (4) Aviation gasoline--\$.06 per gallon;
- 11 (5) Jet fuel--\$.04 per gallon;
- 12 (6) E85 and M85--\$.10 per gallon;



- 1 (7) E85 and M85 used in aircraft--\$.04 per gallon;
- 2 (8) Liquid petroleum gas--\$.20 per gallon;
- 3 (9) Compressed natural gas--\$.10 per gallon;
- 4 (10) Biodiesel blend--\$.20 per gallon.

5 Section 2. That § 10-47B-4 be amended to read as follows:

6 10-47B-4. The fuel excise tax rates for the tax imposed by this chapter are as follows:

- 7 (1) Motor fuel (except ethanol blends, E85 and M85 blends, and aviation gasoline)--\$.22
- 8 per gallon;
- 9 (2) Special fuel (except jet fuel and biodiesel blend)--\$.22 per gallon;
- 10 (3) Ethanol blends--\$.20 per gallon;
- 11 (4) Aviation gasoline--\$.06 per gallon;
- 12 (5) Jet fuel--\$.04 per gallon;
- 13 (6) E85 and M85--\$.10 per gallon;
- 14 (7) E85 and M85 used in aircraft--\$.04 per gallon;
- 15 (8) Liquid petroleum gas--\$.20 per gallon;
- 16 (9) Compressed natural gas--\$.10 per gallon;
- 17 (10) Biodiesel blend--\$.22 per gallon.

18 Section 3. Section 2 of this Act is effective on January 1, 2010.

State of South Dakota

EIGHTIETH SESSION LEGISLATIVE ASSEMBLY, 2005

555L0844

HOUSE ENGROSSED NO. **SB 222** - 02/28/2005

Introduced by: Senator Apa and Representative Putnam

1 FOR AN ACT ENTITLED, An Act to provide for the appropriation and distribution of the
2 excise tax on the gross receipts of personal communications system, wireless, and cellular
3 companies, to retroactively apply the appropriations and distribution of the excise tax, and
4 to declare an emergency.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

6 Section 1. That chapter 10-33A be amended by adding thereto a NEW SECTION to read
7 as follows:

8 The secretary shall deposit sixty percent of the revenue collected from the tax imposed by
9 this chapter into the property tax reduction fund and forty percent of the revenue collected from
10 the tax imposed by this chapter into the county telecommunications gross receipts fund. There
11 is hereby created in the state treasury the county telecommunications gross receipts fund.

12 Section 2. That chapter 10-33A be amended by adding thereto a NEW SECTION to read
13 as follows:

14 The secretary shall distribute to each county an amount equal to the money deposited in the
15 county telecommunications gross receipts fund times the ratio of population of the county to the
16 total population of all counties. The secretary shall base the allocation of money on the most



1 recent decennial census of the United States Department of Commerce, Bureau of the Census.
2 The secretary shall make distributions from the county telecommunications gross receipts fund
3 each March, June, September, and December. The secretary shall approve vouchers and the state
4 auditor shall draw warrants to pay each county its share of the distribution.

5 Section 3. The provisions of sections 1 and 2 of this Act apply retroactively to July 1, 2003.
6 Any prior appropriation or distribution of the revenue consistent with these provisions is hereby
7 validated, ratified, and affirmed.

8 Section 4. That § 10-33A-5 be repealed.

9 ~~10-33A-5. The secretary shall deposit sixty percent of the revenue collected from the tax~~
10 ~~imposed by this chapter into the property tax reduction fund and forty percent of the revenue~~
11 ~~collected from the tax imposed by this chapter into the county telecommunications gross~~
12 ~~receipts fund. There is hereby created in the state treasury the county telecommunications gross~~
13 ~~receipts fund.~~

14 Section 5. That § 10-33A-6 be repealed.

15 ~~10-33A-6. The secretary shall distribute to each county an amount equal to the money~~
16 ~~deposited in the county telecommunications gross receipts fund times the ratio of population of~~
17 ~~the county to the total population of all counties. The secretary shall base the allocation of~~
18 ~~money on the most recent decennial census of the United States Department of Commerce,~~
19 ~~Bureau of the Census. The secretary shall make distributions from the county~~
20 ~~telecommunications gross receipts fund each March, June, September, and December. The~~
21 ~~secretary shall approve vouchers and the state auditor shall draw warrants to pay each county~~
22 ~~its share of the distribution.~~

23 Section 6. Whereas, this Act is necessary for the support of the state government and its
24 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in

- 1 full force and effect from and after its passage and approval.